Case, supra, page 445. If within a State, but forming a means of interstate commerce, Congress must act to restrain the State: *supra,* pages 445–8, and the cases there cited. If between two or more States, then the failure or refusal of Congress to act, will restrain the State from acting only when the waterway requires general regulation: *supra,* pages 466, 448.

The power of restraint which was established in the *Wheeling Bridge Case,* was recognized by Justice SWAYNE, in *Conway* v. *Taylor's Ex.* (1862), 1 Black. (66 U. S.) 603, 634; Justice CATRON, in *Miss. & M. RR. Co.* v. *Ward* (1863), 2 Black. (67 U. S.) 485, 495; Justice STRONG, in *U. P. RR. Co.* v. *Hall* (1876), 1 Otto (91 U. S.) 343, 355; Justice FIELD, in *Sherlock* v. *Alling* (1876), 3 Otto (93 U. S.) 99, 102, and in the Brooklyn Bridge Case of *Miller* v. *The Mayor* (1883), 109 U. S. 385, 396.

JOHN B. UHLE.

[The unexpected length of this article compels its division and the insertion of the latter part in the November number of this magazine.—ED.]

Supreme Court of Iowa.

COLLINS v. HILLS *et al.*

The original package is not broken and the law is not varied by selling liquors in the bottles in which they have been shipped from another State, although the bottles came packed in boxes and barrels, and were taken out and sold singly after their arrival.

Delivery of property to the consignee, subjects its ownership and sale in the original package, to the laws of the State where it is delivered.

The License Cases, supra, followed.

Appeal from the Superior Court of Keokuk County.

D. F. Miller, Sr., J. H. Anderson, H. Scott, Howell & Son, and *W. B. Collins,* for the plaintiff.

Anderson & Davis and *J. F. Smith,* for the defendants.

REED, C. J., February 7, 1889. This was an action in equity to enjoin the defendant from maintaining a nuisance. It is alleged in the petition, that the defendant kept, in a designated building in the City of Keokuk, a place in which he carried on the business of selling intoxicating liquors, in violation o the laws of this State. On the hearing, the Superior Court found that at the time, and in the place mentioned in the petition, the defendant kept certain intoxicating liquors, consist-

ing of whiskey and beer, and that he was then engaged in the business of selling the same; that he purchased the said liquors in the States of Ohio, Illinois and Missouri, and imported the same into this State.

The beer, when purchased, was put up in bottles, which were packed in cases, a certain number of bottles in each case, The only sale of beer made by the defendant, was by the case; this is, the cases were not opened by him, but were delivered to the purchasers in the same condition in which he received them from the carrier.

The whiskey was also put up in bottles. One brand, purchased in Ohio, was put up in quart bottles, in each of which was blown the name of the manufacturer, and each, when filled, was securely sealed with a metallic cap, and placed in a pasteboard box, and then the bottles were packed in boxes or barrels, for shipment. Another brand, purchased in Illinois, was put up in pint bottles, each of which, when filled, was securely closed and sealed, and these were also packed in boxes or barrels, for shipment, and were received by the defendant in that condition. His sales of whiskey were by the single bottle. On receiving the barrels and boxes in which the bottles were packed, he opened the same, and placed the bottles on the shelves in his store, and sold the same to his customers in such numbers as they required. He did not, in any instance, open the bottles, or sell the liquors in quantities less than that contained in them.

When he made the purchases, he intended to sell the liquors in this State in the manner pursued by him subsequently in making the sales. He was not a registered pharmacist, nor did he have a permit from the Board of Supervisors, to sell intoxicating liquors for the purposes for which such liquors are permitted to be sold by the statutes of the State. But the purchasers bought the liquors, intending to use the same as a beverage, and that intention was known to him when he made the sale.

The Superior Court held, in effect, that the transaction of selling the beer in the manner in which it was done, was beyond the power of the State to control or prohibit, but was purely a matter of conveyance between the States, which

could be regulated only by the Congress of the United States; also, that when the boxes and barrels in which the bottles of whiskey were shipped to and received by the defendant, were opened, and they were removed therefrom, the transaction, as a matter of interstate commerce, was fully consummated, and that subsequent dealings with the liquors were governed by the statutes of this State. And the judgment entered, was in accordance with those views. The findings of fact set out in the judgment, appear to be sustained by the evidence. And, in our consideration of the case, it will not be necessary to give much attention to the testimony. Both parties appealed, the plaintiff's appeal being first perfected.

The distinction drawn by the Superior Court between the different transactions, does not appear to us to rest upon any sound legal principle. The liquor was, in each case, put up by the manufacturer, or dealer, in another State, with a view to sales in that condition. The subsequent packing of the bottles in boxes and barrels, was a mere matter of convenience in the sale and shipment of the property. When the defendant purchased one hundred bottles, either of beer or whiskey, he, in effect, purchased that number of packages of the article, and when he sold by the bottle, the transaction was of the same character. The fact that, as a matter of convenience in handling during the transportation of the property, the bottles were packed in boxes and barrels, can make no difference as to the character, in law, of the transaction. If he had the right to bring the liquor within the State, and to sell it here, he had the right to adopt such means and mode of shipment as best suited his convenience or interest; for, so far as we are advised, there is no regulation upon the subject of either State or National enactment. The right to buy and sell in such quantities as he chose, is necessarily included in the right to buy and sell in any quantity. The right to bring it within the State by the car-load is as certain as the right to bring it in by the single bottle or other package. If his interest or convenience would be better served by shipping into the State in cars fitted up with tanks, or other vessels attached to the cars, and from which the liquors must be drawn at the end of the voyage, he had the right, in the absence of statutory regulation,

to adopt that mode of transportation. But in that case, the liquors, on their arrival within the State, would of necessity be placed in other vessels than those in which they were brought within the State; and the result of the distinction would be that, while he had the right to bring them within the State for the purpose of selling them here, yet, having brought them here in the exercise of that right, he had no right to sell them because he had adopted a mode of transportation which, although perfectly lawful, required their removal from the vessels in which they were transported. The unsoundness of the attempted distinction is shown by the absurd results to which it would lead. If he had the right to sell the liquors in the State because the transaction of their purchase and transportation was one of National, rather than State, jurisdiction, it follows necessarily that he had the right to make the sales in whatever form or quantity he saw fit. Any other holding, it seems to us, would lead to results and conclusions which owing to their absurdity, would be shocking alike to legal judgment and the common sense of mankind.

In our opinion, then, the case turns solely on the question whether defendant had the right, notwithstanding the statute of the State, to sell the liquors within the State. And in considering that question, it is important to keep in mind the scope and object of the statutes. For more than thirty years, the State has sought by legislative enactments, to mitigate the evils of intemperance. During all that time, however, it has regarded intoxicating liquors as a legitimate article of commerce, and the legislation has been restrictive, rather than prohibitory. The sale and use of such liquors as a beverage has been regarded as an evil so enormous as to demand the exercise of the highest powers of the State for its suppression. At the same time, it has been recognized that the article had its legitimate uses. The object aimed at by the legislation has been the suppression of the traffic in the article for the use wherein it has been a continuous and crying evil, and to regulate and protect it for such uses as are beneficial, or at least not hurtful. The statute forbids the sale of such liquors for use as a beverage, and prescribes severe penalties for violations of its provisions; but it allows sales of the article for use

as a medicine, and in the arts, and for culinary and sacramental purposes, and prescribes certain limitations and restrictions upon the traffic for those uses.

In their scope and object, these statutes are not materially different from those which have been enacted for the restriction of the sale of poisons, and the regulation of the storage, handling, and use of explosives, and other articles dangerous to the lives or property of the people, or deleterious to society; and they were enacted in the exercise of the same power, viz., the police power of the State. That the State has the power to enact such legislation is not now a question of doubt, and that the legislature is the sole judge of the necessity for their enactment is equally clear. Laws having the same general objects in view have probably been enacted in every State in the Union, and their validity has seldom been questioned. The validity of these particular statutes has frequently been declared by this Court, and it has been adjudged by the highest tribunal in the nation that statutes having the same specific object are not in conflict with any provision of the Federal Constitution: *Mugler* v. *Kansas* (1887), 123 U. S. 623.

The statutes called in question in the *License Cases* (1847), 5 How. (46 U. S.) 504, were not essentially different in their object from those of this State. They were enacted for the purpose of mitigating, and to some extent suppressing, the evils of intemperance. The statute of Massachusetts prohibited the traffic in intoxicating liquors by all persons except those holding a license from the county commissioners, and licensed vendors were forbidden to sell in quantities less than twenty-eight gallons in any single sale. Under its provisions, no person was entitled, as matter of right, to receive a license but the question whether any licenses should be granted in the county was left entirely to the discretion of the commissioners. A person who did not hold a license, engaged in the business of selling foreign liquors, imported into the United States under the statutes thereof. He was indicted and convicted in the State courts of a violation of the statute of the State. The other cases were under similar statutes of the States of New Hampshire and Rhode Island, and involved similar states of fact. The causes being removed to the

Supreme Court, the judgments were affirmed. Subsequently the same claim of right was urged in these cases that is here alleged by the defendant, viz.: that as the liquors were transported into the States under the authority of the Federal Constitution and statutes, it was not competent for the States to prohibit their sale, or regulate the manner in which it should be conducted. But the Court held that the statutes were not in their operation in conflict with the commercial provisions of the federal Constitution. And it appears to us that this is necessarily so.

When the power of the State to legislate with reference to the subject matter is conceded, it follows, necessarily, we think, that all property within the State is subject to the regulations it has enacted. When property purchased in another State is transported to this State, and here delivered to the purchaser, to be used or consumed within the State, the transaction, in so far as it is governed by the provisions for the regulation of commerce among the States, is at an end. The sale and delivery are then consummated, and the property becomes at once subject to the laws which the State has enacted governing its use or disposition. It is true that some things are said by the Court in *Bowman* v. *Railway Co.* (1888), 125 U. S. 465, which appear to be in conflict with that view; but we do not understand that the question was involved or decided in that case. The sole question involved was as to the validity of certain provisions of the statute which forbade common carriers from transporting to any point within the State intoxicating liquors, unless they had been furnished with the written evidence of the right of the consignee to sell the same in the State. It is conceded that that subject is beyond the power of the State to legislate upon. But it by no means follows that the owner has the right, after the property has been delivered to him in the State, to use or dispose of it in a manner different from that prescribed by this State for the sale or use of such property generally.

It follows from these considerations that on defendant's appeal the judgment should be affirmed, while on plaintiff's appeal it will be reversed.

This case is printed here because *Leisy* v. *Hardin* was decided upon its authority: *infra*, page 490. It is also interesting as showing how much more accurate in his understanding of the law, was the Judge of the Superior Court (Hon. Henry Bank, Jr.) than the Supreme Court of the State, owing to the influence of the unreversed, though actually valueless *License Cases* of 1847. The test of an unbroken, original package, prevents one State from boycotting the products of other States, by declaring them not to be articles of commerce or to be dangerous to the welfare of its citizens.

The precise point in respect to the boxed bottles of whiskey was not involved in the case which did reach the Supreme Court of the United States, and in that sense, remains undecided. But the decision of the Superior Court is so advantageous to the powers of the local authorities, and so completely accords with the principles of *Brown* v. *Maryland*, that it would be a serious task to ask its reversal.

Supreme Court of Iowa.

GRUSENDORF *v.* HOWAT.

The sale of an original package is subject to the laws of the State, as the Congressional powers over interstate commerce terminate upon the delivery of the package within the State.

Certiorari to the District Court of Clinton County.

W. C. Grohe and *P. B. Wolfe*, for the plaintiff.

Hon. *A. J. Baker*, Attorney General, for the defendant.

REED, C. J., February 7, 1889. The plaintiff was, in a proceeding, enjoined from carrying on the business of selling intoxicating liquors in a certain designated building in the City of Clinton. Afterwards a complaint was filed in the Court, charging him with a violation of the injunction. He was cited to appear before the Court and show cause why he should not be punished for contempt. On the trial, it was shown that he had, after the injunction, sold intoxicating liquors in the building named. In defense, he showed that the liquors sold by him were purchased in the State of Illinois, and were transported to him in this State by a common carrier, and that he sold the same in the packages in which they were when he purchased them, and in which they were transported to this State. The Court adjudged him to be in contempt, and entered judgment against him, imposing a fine and imprisonment. He thereupon sued out a writ of *certiorari* from this

Court, and in obedience to that mandate, the trial judge has certified the record of the proceeding to us. The judgment of the lower court is in accord with our holding in the foregoing case of *Collins* v. *Hills*.

The writ will therefore be dismissed.

The principle of this case is clearly not in accord with the law, as stated in *Brown* v. *Maryland* (*supra*, pages 439, 442), *Low* v. *Austin* (Id. 443, 444), *The Passenger Cases* (Id. 459, 462, 465), and the subsequent decisions of the Supreme Court of the United States. The first positive appearance of such doctrine was in *N. Y.* v. *Miln* (*supra*, pages 448, 450), and the strong root which has flourished from 1847, when the *License Cases* (*supra*, pages 433, 456), were decided, has nourished many State decisions without the Courts perceiving the full effect of the principles laid down by Justice CURTIS, in *Cooley* v. *Port Wardens* (*supra*, pages 466, 470). Careful reading cannot but verify the statement of Chief Justice FULLER, (*infra*, page 507) that the authority of the New Hampshire License Case has been distinctly overthrown.

Supreme Court of Iowa.

LEISY *et al.* v. HARDIN.

The sale of liquors in the original packages in which they are brought from another State, may be prohibited under the police powers of the place of sale.

Appeal from the Superior Court of Keokuk County.

William B. Collins and *H. Scott Howell & Son*, for the appellants.

Anderson & Davis, for the appellee.

ROTHROCK, J., October 4, 1889. (After stating the facts substantially as on pages 490–2, *infra*.) We have stated the facts somewhat in detail for the purpose of demonstrating that they present the same question determined by this Court in the cases of *Collins* v. *Hills*, and in *Grusendorf* v. *Howat*, *supra*. Counsel for appellees concede, in argument, that the cases cited involve the same controlling question. It is true they claim that in this case there is the exception that the plaintiffs and appellees are citizens and residents of Illinois, and produce and manufacture their beer in that State, and sell it as manufacturers; but no claim is made, in argument, and we can discover no reason why the laws of this State, which for-

bid the sale of intoxicating liquors, are not applicable to all persons, no matter where they may abide. We adhere to the rule announced in the cited cases, and have no desire to further discuss or elaborate the questions involved.

The judgment of the Superior Court will be reversed.

The case was then removed to the Supreme Court of the United States, and there reversed: See next case.

Supreme Court of the United States.

LEISY *et al.* v. HARDIN.

The Constitutional power to regulate commerce between the States, has no other limits than those prescribed by the Constitution itself.

Interstate commerce, or the purchase, sale and exchange of commodities, requires a uniform system, and in the absence of Congressional action cannot be the subject of State laws.

State authority may be exercised over subjects of interstate commerce only when a general regulation is not necessary or convenient, and Congress has not acted.

The responsibility is upon Congress to permit State regulation of interstate traffic.

Merchandise brought from another State is under the Constitutional power exclusively, until it has been sold or disposed of so as to mingle with the common mass of property in the State into which it has been brought.

Liquor imported from another State for sale in the packages in which it has been shipped, cannot be seized under State laws, while in the possession of the consignee in the original packages, awaiting sale.

Ardent spirits, distilled liquors, ale and beer, are the subjects of exchange, barter and traffic; that is, are subjects of commerce and not such articles as a State may subject to sanitary regulations, upon the plea of tending to spread disease, pestilence and pauperism.

In error to the Supreme Court of the State of Iowa.

Chief Justice FULLLER stated the case thus:—

Christiana Leisy, Edward Leisy, Lena and Albert Leisy, composing the firm of Gus. Leisy & Co., citizens of Illinois, brought their action of replevin against A. J. Hardin, the duly elected and qualified Marshal of the City of Keokuk, Iowa, and, *ex officio*, Constable of Jackson Township, Lee county, Iowa, in the Superior Court of Keokuk, in said County, to recover 122 one-quarter barrels of beer, 171 one-eighth barrels of beer,

and 11 sealed cases of beer, which had been seized by him in a proceeding on behalf of the State of Iowa against said defendants, under certain provisions of the Code of the State of Iowa; and upon issue joined, a jury having been duly waived by the parties, the case was submitted to the Court for trial, and, having been tried, the Court, after having taken the case under advisement, finally rendered and filed in said cause its findings of fact and conclusions of law in words and figures following, to wit:

(1) That plaintiffs, Gus. Leisy & Co., are a firm of that name and style, residing in the State of Illinois, with principal place of business at Peoria, Ill.; that said firm is composed wholly of citizens of Illinois; that said firm is engaged as brewers in the manufacture of beer in the said city of Peoria, Ill., selling same in the States of Illinois and Iowa.

(2) That the property in question, to wit, 122 one-quarter barrels of beer, of the value of $300, 171 one-eighth barrels of beer, value $215, and 11 sealed cases of beer, value of $25, was all manufactured by said Leisy & Co. in the city of Peoria, Ill., and put up in said kegs and cases by the manufacturers, viz., Gus. Leisy & Co., at Peoria, Ill.; that each of said kegs was sealed and had placed upon it, over the plug in the opening of each keg, a United States internal revenue stamp of the district in which Peoria is situated; that said cases were substantially made of wood, each one of them containing 24 quart bottles of beer, each bottle of beer corked, and the cork fastened in with a metallic cap, sealed and covered with tin foil, and each case was sealed with a metallic seal; that said beer in all of said kegs and cases was manufactured and put up into said kegs and cases as aforesaid by the manufacturers, to wit, Gus. Leisy & Co., plaintiffs in this suit, and to open said cases the metallic seals had to be broken.

(3) That the property herein described was transported by said Gus. Leisy & Co. from Peoria, Ill., by means of railways, to Keokuk, Iowa, in said sealed kegs and cases, as same was manufactured and put up by them in the city of Peoria, Ill.

(4) That said property was sold and offered for sale in Keokuk, Iowa, by John Leisy, a resident of Keokuk, Iowa, who is agent for said Gus. Leisy & Co.; that the only sales and offers to sell of said beer was in the original keg and sealed case as manufactured and put up by said Gus. Leisy & Co., and imported by them into the State of Iowa; that no kegs or cases sold or offered for sale were broken or opened on the premises; that as soon as same was purchased it was removed from the premises occupied by Gus. Leisy & Co., which said premises are owned by Christiana Leisy, a member of the firm of Gus. Leisy & Co., residing in and being a citizen of Peoria, Ill.; that none of such sales or offers to sell were made to minors or persons in the habit of becoming intoxicated.

(5) That on the 30th day of June, 1888, the defendant, as Constable of Jackson Township, Lee County, Iowa, by virtue of a search-warrant is-

sued by J. G. Garrettson, an acting Justice of the Peace of said Jackson Township, upon an information charging that in premises occupied by said John Leisy there were certain intoxicating liquors, etc., seized the property therein described, and took same into his custody.

(6) And the Court finds that said intoxicating liquors thus seized by the defendant in his official capacity as Constable were kept for sale in the premises described in the search-warrant in Keokuk, Lee County, Iowa, and occupied by Gus. Leisy & Co., for the purpose of being sold, in violation of the provisions of the laws of Iowa, but which laws, the Court holds, are unconstitutional and void, as herein stated.

(7) That on the 2d day of July, 1888, plaintiffs filed in this Court their petition, alleging, among other things, that they were the owners and entitled to the possession of said property, and that the law under which said warrant was issued was unconstitutional and void, being in violation of section 8 of article I of the Constitution of the United States, and having filed a proper bond a writ of replevin issued, and the possession of said property was given to plaintiffs.

From the foregoing facts the Court finds the following conclusions:

That plaintiffs are the sole and unqualified owners of said property, and entitled to the possession of the same, and judgment for $1.00 damages for their detention, and costs of suit; that so much of chapter 6, tit. 11, Code 1873, and the amendments thereto, as prohibits such sales by plaintiffs, is unconstitutional, being in contravention of section 8 of article I of the Constitution of the United States; that said law has been held unconstitutional in a like case heretofore tried and determined by this Court, involving the same question, in the case of *Collins* v. *Hills*, decided prior to the commencement of this suit, and prior to the seizure of said property by defendant; to all of which the defendant at the time excepted.

Judgment was thereupon rendered as follows:

"This cause coming on for hearing, plaintiffs appearing by *Anderson & Davis*, their attorneys, and the defendant by *H. Scott Howell & Son* and *William B. Collins*, his attorneys, and the cause coming on for final hearing on the pleadings on file and the evidence introduced, the Court makes the special finding of facts and law herewith ordered to be made of record, and finds that plaintiffs are the sole and unqualified owners and entitled to possession of the following described personal property, to wit: 122 one-quarter (¼) barrels of beer, of the value of $300.00; 171 one-eighth (⅛) barrels of beer, of the value of $215.00; and eleven (11) sealed cases of beer, of the value of $25.00.

That plaintiffs being in possession of said property by virtue of a bond heretofore given, said possession in plaintiffs is confirmed.

The Court further finds that the writ issued by J. G. Garrettson, a Justice of the Peace, under which defendant held possession of said property and seized same, is void, same having been issued under sections of the law of Iowa that are unconstitutional and void.

That plaintiff is entitled to one dollar damages for the wrongful detention of said property.

It is therefore ordered and considered by the Court that the plaintiffs have and recover of defendant one dollar damages, and costs of this action, taxed at $———.

To which findings, order, and judgment of Court the defendant at the time excepts, and asks until the 31st day of October, 1888, to prepare and file his bill of exceptions, which request is granted, and order hereby made."

A motion for a new trial was made and overruled, and the cause taken to the Supreme Court of Iowa by appeal, and errors therein assigned as follows:

"(1) The Court erred in finding that the plaintiffs were the sole and unqualified owners, and were entittled to the possession of the intoxicating liquors seized and held by appellant.

(2) In finding that the plaintiffs were entitled to one dollar damages for their detention, and for costs of suit.

(3) The Court erred in holding that the sales of beer in 'original packages,' by the keg and case, as made by John Leisy, agent of plaintiffs, were lawful.

(4) The Court erred in its conclusions and finding that so much of the law of the State of Iowa embraced in chapter 6, tit. 11, Code 1873, and the amendments thereto, as prohibits such sales of beer in the State of Iowa, was unconstitutional, being in contravention of section 8, article I of the Constitution of the United States.

(5) The Court erred in rendering a judgment for plaintiffs, and awarding them the intoxicating liquors in question, and damages and costs against defendant.

(6) The Court erred in overruling the defendant's motion for a new trial."

The Supreme Court reversed the judgment of the Superior Court, and entered judgments against the plaintiffs and their sureties on the replevin bond in the amount of the value of the property, with costs. The judgment thus concluded:

And it is further certified by this Court, and hereby made a part of the record, that in the decision of this suit there is drawn in question the validity of certain statutes of the State of Iowa, namely, chapter 6 of title 11 of the Code of Iowa of 1873 and the amendments thereto, on the ground of their being repugnant to and in contravention of section 8 of article I of the Constitution of the United States, said appellees, Gus. Leisy & Co., claiming such statutes of the State of Iowa are invalid, and the decision in this cause is in favor of the validity of said statutes of the State of Iowa.

To review this judgment, a writ of error was sued out from this Court. The opinion of the Supreme Court, not yet reported in the official series, will be found [*Supra* page 490].

The seizure of the beer in question by the constable was made under the provisions of chapter 8, tit. 11, Code 1873, and amendments thereto: Code 1873, p. 279; Laws 1884, c. 8, p. 8; c. 143, p. 146; Laws 1888, c. 71, p. 91; 1 McClain, Ann. Code, §§ 2359-2431, p. 603.

Section 1523 of the Code is as follows:

"No person shall manufacture or sell, by himself, his clerk, steward, or agent, directly or indirectly, any intoxicating liquors, except as hereinafter provided. And the keeping of intoxicating liquor, with the intent on the part of the owner thereof, or any person acting under his authority, or by his permission, to sell the same within this State, contrary to the provisions of this chapter, is hereby prohibited, and the intoxicating liquor so kept, together with the vessels in which it is contained, is declared a nuisance, and shall be forfeited and dealt with as hereinafter provided."

Chapter 71, Laws 22d Gen. Assembly, is an act approved April 12, 1888 (Laws of Iowa, 1888, p. 91), of which the first section is as follows:

"That after this act takes effect, no person shall manufacture for sale, sell, keep for sale, give away, exchange, barter, or dispense any intoxicating liquor, for any purpose whatever, otherwise than as provided in this act. Persons holding permits as herein provided shall be authorized to sell and dispense intoxicating liquors for pharmaceutical and medicinal purposes, and alcohol for specified chemical purposes, and wine for sacramental purposes, but for no other purposes whatever; and all permits must be procured as hereinafter provided from the district court of the proper county at any term thereof after this act takes effect, and a permit to buy and sell intoxicating liquors when so procured shall continue in force for one year from date of its issue, unless revoked according to law, or until application for renewal is disposed of, if such application is made before the year expires: provided, that renewals of permits may be annually granted upon written application by permit holders who show to the satisfaction of the court or judge that they have, during the preceding year, complied with the provisions of this act, and execute a new bond as in this act required to be originally given, but parties may appear and resist renewals the same as in applications for permits.

Section 2 provides for notice of application for permit, and section 3 reads thus:

Applications for permits shall be made by petition signed and sworn to by the applicant, and filed in the office of the clerk of the district court of the proper county at least ten days before the first day of the term; which petition shall state the applicant's name, place of residence, in what business he is then engaged, and in what business he has been engaged for two years previous to filing petition; the place, particularly describing

it, where the business of buying and selling liquor is to be conducted; that he is a citizen of the United States and of the State of Iowa; that he is a registered pharmacist, and now is, and for the last six months has been, lawfully conducting a pharmacy in the township or town wherein he proposes to sell intoxicating liquors under the permit applied for, and, as the proprietor of such pharmacy, that he has not been adjudged guilty of violating the law relating to intoxicating liquors within the last two years next preceding his application; and is not the keeper of a hotel, eating-house, saloon, restaurant, or place of public amusement; that he is not addicted to the use of intoxicating liquors as a beverage, and has not, within the last two years next preceding his application, been directly or indirectly engaged, employed, or interested in the unlawful manufacture, sale, or keeping for sale, of intoxicating liquors; and that he desires a permit to purchase, keep, and sell such liquors for lawful purposes only.

Various sections follow, relating to giving bond; petition as to the good moral character of applicant; hearing on the application; oath upon the issuing of permit; keeping of record; punishment by fine, imprisonment, etc.

By section 20, sections 1524, 1526, and other sections of the Code, were, in terms, repealed. The Code provided for the seizure of intoxicating liquors unlawfully offered for sale, and no question in reference to that arises here, if the law in controversy be valid.

By section 1, c. 8, Laws 1884, p. 8, ale, beer, wine, spirituous, vinous, and malt liquors are defined to be intoxicating liquors.

Section 1524, Code 1873, p. 279, was as follows:

Nothing in this chapter shall be construed to forbid the sale, by the importer thereof, of foreign intoxicating liquor imported under the authority of the laws of the United States regarding the importation of such liquors in accordance with such laws: provided, that the said liquor, at the time of said sale by said importer, remains in the original casks or packages in which it was by him imported, and in quantities not less than the quantities in which the laws of the United States require such liquors to be imported, and is sold by him in said original casks or packages, and in said quantities only; and nothing contained in this law shall prevent any persons from manufacturing in this State liquors for the purpose of being sold according to the provisions of this chapter, to be used for mechanical, medicinal, culinary, or sacramental purposes.

This section is substantially identical with section 2 of chapter 45 of the Acts of the Fifth General Assembly of Iowa, approved January 22, 1855, (Laws Iowa 1854–55, p. 58) and it was carried into the revision of 1860 as section 1560 (Re-

vision 1860, c. 64, p. 259). It was repealed by section 20 of the act of April 12, 1888, as before stated.

Section 1553 of the Code, as amended by the act of April 5, 1886, (Laws Iowa 1886, p. 83,) forbade any common carrier to bring within the State of Iowa, for any person or persons or corporation, any intoxicating liquors from any other State or Territory of the United States, without first having been furnished with a certificate, under the seal of the county auditor of the county to which said liquor was to be transported, or was consigned for transportation, certifying that the consignee, or person to whom such liquor was to be transported, conveyed, or delivered, was authorized to sell intoxicating liquors in such county. This was held to be in contravention of the federal Constitution, in *Bowman* v. *Railway Co.*, (1888) 125 U. S. 465.

James C. Davis, for plaintiffs in error.

H. Scott Howell, Wm. B. Collins, and John Y. Stone, for defendant in error.

Chief Justice FULLER, after stating the facts as above, delivered the opinion of the court, April 28, 1890.

The power vested in Congress "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes," is the power to prescribe the rule by which that commerce is to be governed, and is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution. It is co-extensive with the subject on which it acts, and cannot be stopped at the external boundary of a State, but must enter its interior, and must be capable of authorizing the disposition of those articles which it introduces, so that they may become mingled with the common mass of property within the territory entered: *Gibbons* v. *Ogden*, (1824) 9 Wheat. (22 U. S.) 1; *Brown* v. *Maryland*, (1827) 12 Wheat. (25 U. S.) 419. And while, by virtue of its jurisdiction over persons and property within its limits, a State may provide for the security of the lives, limbs, health, and comfort of persons and the protection of property so situated, yet a subject-matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of

the police power of the State, unless placed there by congressional action. *Henderson* v. *The Mayor*, (1876) 92 U. S. 259; *The Hannibal & St. Jo R. R. Co.* v. *Husen*, (1878) 95 U. S. 465; S.C. 17 AMERICAN LAW REGISTER, 164; *Walling* v. *Michigan* (1886), 116 U. S. 446; *Robbins* v. *Taxing Dist.*, (1887) 120 U. S. 489.

The power to regulate commerce among the States is a unit, but, if particular subjects within its operation do not require the application of a general or uniform system, the States may legislate in regard to them with a view to local needs and circumstances, until Congress otherwise directs; but the power thus exercised by the States is not identical in its extent with the power to regulate commerce among the States. The power to pass laws in respect to internal commerce, inspection laws, quarantine laws, health laws, and laws in relation to bridges, ferries, and highways, belongs to the class of powers pertaining to locality, essential to local intercommunication, to the progress and development of local prosperity, and to the protection, the safety, and the welfare of society, originally necessarily belonging to, and upon the adoption of the Constitution reserved by the States, except so far as falling within the scope of a power confided to the general government. Where the subject matter requires a uniform system, as between the States, the power controlling it is vested exclusively in Congress, and cannot be encroached upon by the States; but where, in relation to the subject-matter, different rules may be suitable for different localities, the States may exercise powers, which though they may be said to partake of the nature of the power granted to the general government, are strictly not such, but are simply local powers, which have full operation until or unless circumscribed by the action of Congress in effectuation of the general power: *Cooley* v. *Board of Wardens* (1851), 12 How. (53 U. S.) 299.

It was stated in the thirty-second number of the Federalist that the States might exercise concurrent and independent power in all cases but three: *First*, where the power was lodged exclusively in the federal Constitution; *second*, where it was given to the United States and prohibited to the States; *third*, where from the nature and subjects of the power, it must

be necessarily exercised by the national government exclusively. But it is easy to see that Congress may assert an authority, under one of the granted powers, which would exclude the exercise by the States upon the same subject of a different, but similar power, between which and that possessed by the general government no inherent repugnancy existed. Whenever, however, a particular power of the general government is one which must necessarily be exercised by it, and Congress remains silent, this is not only not a concession that the powers reserved by the States may be exercised as if the specific power had not been elsewhere reposed, but, on the contrary, the only legitimate conclusion is that the general government intended that power should not be affirmatively exercised, and the action of the States cannot be permitted to effect that which would be incompatible with such intention. Hence, inasmuch as interstate commerce, consisting in the transportation, purchase, sale and exchange of commodities, is national in its character, and must be governed by a uniform system, so long as Congress does not pass any law to regulate it, or allowing the States so to do, it thereby indicates its will that such commerce shall be free and untrammeled: *County of Mobile* v. *Kimball* (1881), 102 U. S. 691; *Brown* v. *Houston* (1885), 114 U. S. 622, 631; *Railroad Co.* v. *Illinois* (1886), 118 U. S. 557; *Robbins* v. *Taxing Dist.* (1887), 120 U. S. 489, 493.

That ardent spirits, distilled liquors, ale and beer are subjects of exchange, barter and traffic, like any other commodity in which a right of traffic exists, and are so recognized by the usages of the commercial world, the laws of Congress and the decisions of courts, is not denied. Being thus articles of commerce, can a State, in the absence of legislation on the part of Congress, prohibit their importation from abroad or from a sister State? or when imported, prohibit their sale by the importer? If the importation can not be prohibited without the consent of Congress, when does property imported from abroad, or from a sister State, so become part of the common mass of property within a State as to be subject to its unimpeded control?

In *Brown* v. *Maryland*, *supra*, the act of the State Legisla-

ture drawn in question, was held invalid, as repugnant to the prohibition of the Constitution upon the States to lay any impost or duty upon imports or exports, and to the clause granting the power to regulate commerce; and it was laid down by the great magistrate who presided over this Court for more than a third of a century, that the point of time when the prohibition ceases, and the power of the State to tax commences, is not the instant when the article enters the country, but when the importer has so acted upon it that it has become incorporated and mixed up with the mass of property in the country, which happens when the original package is no longer such in his hands; that the distinction is obvious between a tax which intercepts the import as an import on its way to become incorporated with the general mass of property, and a tax which finds the article already incorporated with that mass by the act of the importer; that, as to the power to regulate commerce, none of the evils which proceeded from the feebleness of the federal government contributed more to the great revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by Congress; that the grant should be as extensive as the mischief, and should comprehend all foreign commerce, and all commerce among the States; that that power was complete in itself, acknowledged no limitations other than those prescribed by the Constitution, was co-extensive with the subject on which it acts, and not to be stopped at the external boundary of a State, but must be capable of entering its interior; that the right to sell any article imported was an inseparable incident to the right to import it; and that the principles expounded in the case applied equally to importations from a sister State.

Manifestly this must be so, for the same public policy applied to commerce among the States as to foreign commerce, and not a reason could be assigned for confiding the power over the one which did not conduce to establish the propriety of confiding the power over the other: Story, Const. § 1066. And although the precise question before us was not ruled in *Gibbons* v. *Ogden* and *Brown* v. *Maryland*, yet we think it was virtually involved and answered, and that this is demonstrated,

among other cases, in *Bowman* v. *Railway Co.* (1888), 125 U. S. 465.

In the latter case, section 1553 of the Code of the State of Iowa, as amended by chapter 66 of the Acts of the Twenty-first General Assembly in 1886, forbidding common carriers to bring intoxicating liquors into the State from any other State or Territory, without first being furnished with a certificate as prescribed, was declared invalid, because essentially a regulation of commerce among the States, and not sanctioned by the authority, express or implied, of Congress. The opinion of the court, delivered by Mr. Justice MATTHEWS, the concurring opinion of Mr. Justice FIELD, and the dissenting opinion by Mr. Justice HARLAN, on behalf of Mr. Chief Justice WAITE, Mr. Justice GRAY, and himself, discussed the question involved in all its phases; and while the determination of whether the right of transportation of an article of commerce from one State to another includes by necessary implication the right of the consignee to sell it in unbroken packages at the place where the transportation terminates was in terms reserved, yet the argument of the majority conducts irresistibly to that conclusion, and we think we cannot do better than repeat the grounds upon which the decision was made to rest.

It is there shown that the transportation of freight or of the subjects of commerce, for the purpose of exchange or sale, is beyond all question a constituent of commerce itself; that this was the prominent idea in the minds of the framers of the Constitution, when to Congress was committed the power to regulate commerce among the several States; that the power to prevent embarrassing restrictions by any State was the end desired; that the power was given by the same words and in the same clause by which was conferred power to regulate commerce with foreign nations; and that it would be absurd to suppose that the transmission of the subjects of trade from the State of the buyer, or from the place of production to the market, was not contemplated, for without that there could be no consummated trade, either with foreign nations or among the States. It is explained that, where State laws alleged to be regulations of commerce among the States have been sustained, they were laws which related to bridges or dams across

streams, wholly within the State, or police or health laws, or to subjects of a kindred nature, not strictly of commercial regulation. But the transportation of passengers or of merchandise from one State to another is in its nature national, admitting of but one regulating power; and it was to guard against the possibility of commercial embarrassments which would result if one State could directly or indirectly tax persons or property passing through it, or prohibit particular property from entrance into the State, that the power of regulating commerce among the States was conferred upon the federal government.

"If in the present case," said Mr. Justice MATTHEWS, "the law of Iowa operated upon all merchandise sought to be brought from another State into its limits, there could be no doubt that it would be a regulation of commerce among the States;" and he concludes that this must be so, though it applied only to one class of articles of a particular kind. The legislation of Congress on the subject of interstate commerce by means of railroads, designed to remove trammels upon transportation between different States, and upon the subject of the transportation of passengers and merchandise (Rev. St. §§ 4252–4289, inclusive), including the transportation of nitroglycerine and other similar explosive substances, with the proviso that, as to them, "any state, territory, district, city, or town within the United States" should not be prevented by the language used "from regulating or from prohibiting the traffic in or transportation of those substances between persons or places lying or being within their respective territorial limits, or from prohibiting the introduction thereof into such limits for sale, use, or consumption therein," is referred to as indicative of the intention of Congress that the transportation of commodities between the States shall be free, except where it is positively restricted by Congress itself, or by States in particular cases by the express permission of Congress.

It is said that the law in question was not an inspection law, the object of which "is to improve the quality of articles produced by the labor of a country, to fit them for exportation; or, it may be for domestic use" (*Gibbons* v. *Ogden* (1824), 9 Wheat (22 U. S.) 1,203; *Turner* v. *Maryland* (1883), 107 U.

S. 38, 55); nor could it be regarded as a regulation of quarantine or a sanitary provision for the purpose of protecting the physical health of the community; nor a law to prevent the introduction into the State of diseases, contagious, infectious, or otherwise.

Articles in such a condition as tend to spread disease are not merchantable, are not legitimate subjects of trade and commerce, and the self-protecting power of each State, therefore, may be rightfully exerted against their introduction, and such exercise of power cannot be considered a regulation of commerce, prohibited by the Constitution; and the observations of Mr. Justice CATRON in the *License Cases* (1847), 5 How. (46 U.S.) 504, 599, are quoted to the effect that what does not belong to commerce is within the jurisdiction of the police power of the State, but that which does belong to commerce is within the jurisdiction of the United States; that to extend the police power over subjects of commerce would be to make commerce subordinate to that power, and would enable the State to bring within the police power "any article of consumption that a State might wish to exclude, whether it belonged to that which was drunk, or to food and clothing; and with nearly equal claims to propriety, as malt liquors and the products of fruits other than grapes stand on no higher ground than the light wines of this and other countries, excluded, in effect, by the law as it now stands. And it would be only another step to regulate real or supposed extravagance in food and clothing." And Mr. Justice MATTHEWS thus proceeds:

"For the purpose of protecting its people against the evils of intemperance, it has the right to prohibit the manufacture within its limits of intoxicating liquors. It may also prohibit all domestic commerce in them between its own inhabitants, whether the articles are introduced from other States or from foreign countries. It may punish those who sell them in violation of its laws. It may adopt any measures tending, even indirectly and remotely, to make the policy effective, until it passes the line of power delegated to Congress under the Constitution. It cannot, without the consent of Congress, express or implied, regulate commerce between its people and those of the other States of the Union, in order to effect its end, however desirable such a regulation might be. * * * Can it be supposed that, by omitting any express declaration on the subject, Congress has intended to submit to the several States the decision of the question in each locality of what shall and what shall not

be articles of traffic in the interstate commerce of the country? If so, it has left to each State, according to its own caprice and arbitrary will, to discriminate for or against every article grown, produced, manufactured, or sold in any State, and sought to be introduced as an article of commerce into any other. If the State of Iowa may prohibit the importation of intoxicating liquors from all other States, it may also include tobacco, or any other article, the use or abuse of which it may deem deleterious. It may not choose, even, to be governed by considerations growing out of the health, comfort, or peace of the community. Its policy may be directed to other ends. It may choose to establish a system directed to the promotion and benefit of its own agriculture, manufactures, or arts of any description, and prevent the introduction and sale within its limits of any or of all articles that it may select as coming into competition with those which it seeks to protect. The police power of the State would extend to such cases, as well as to those in which it was sought to legislate in behalf of the health, peace, and morals of the people. In view of the commercial anarchy and confusion that would result from the diverse exertions of power by the several States of the Union, it cannot be supposed that the Constitution or Congress have intended to limit the freedom of commercial intercourse among the people of the several States."

Many of the cases bearing upon the subject are cited and considered in these opinions, and among others, the *License Cases* (1847), 5 How. (46 U. S.) 504, wherein laws passed by Massachusetts, New Hampshire, and Rhode Island, in reference to the sale of spirituous liquors, came under review, and were sustained, although the members of the court who participated in the decisions did not concur in any common ground upon which to rest them.

That of *Peirce* v. *New Hampshire* is perhaps the most important to be referred to here. In that case, the defendants had been fined for selling a barrel of gin in New Hampshire which they had bought in Boston, and brought coastwise to Portsmouth, and there sold in the same barrel, and in the same condition in which it was purchased in Massachusetts, but contrary to the law of New Hampshire in that behalf. The conclusion of the opinion of Mr. Chief Justice TANEY is in these words:

"Upon the whole, therefore, the law of New Hampshire is, in my judgment, a valid one; for, although the gin sold was an import from another State, and Congress have clearly the power to regulate such importations, under the grant of power to regulate commerce among the several States, yet, as Congress has made no regulation on the subject, the traffic in the article may be lawfully regulated by the State as soon as

it is landed in its territory, and a tax imposed upon it, or a license required, or the sale altogether prohibited, according to the policy which the State may suppose to be its interest or duty to pursue."

Referring to the cases of Massachusetts and Rhode Island, the Chief Justice, after saying that if the laws of those States came in collision with the laws of Congress authorizing the importation of spirits and distilled liquors, it would be the duty of the Court to declare them void, thus continues:

"It has, indeed, been suggested that, if a State deems the traffic in ardent spirits to be injurious to its citizens, and calculated to introduce immorality, vice, and pauperism into the State, it may constitutionally refuse to permit its importation, notwithstanding the laws of Congress; and that a State may do this upon the same principles that it may resist and prevent the introduction of disease, pestilence, or pauperism from abroad. But it must be remembered that disease, pestilence, and pauperism are not subjects of commerce, although sometimes among its attendant evils. They are not things to be regulated and trafficked in, but to be prevented, as far as human foresight or human means can guard against them. But spirits and distilled liquors are universally admitted to be subjects of ownership and property, and are therefore subjects of exchange, barter, and traffic, like any other commodity in which a right of property exists. And Congress, under its general power to regulate commerce with foreign nations, may prescribe what article of merchandise shall be admitted and what excluded; and may therefore admit or not, as it shall deem best, the importation of ardent spirits. And, inasmuch as the laws of Congress authorize their importation, no State has a right to prohibit their introduction. * * * These State laws act altogether upon the retail or domestic traffic within their respective borders. They act upon the article after it has passed the line of foreign commerce, and become a part of the general mass of property in the State. These laws may, indeed, discourage imports, and diminish the price which ardent spirits would otherwise bring. But, although a State is bound to receive and to permit the sale by the importer of any article of merchandise which Congress authorizes to be imported, it is not bound to furnish a market for it, nor to abstain from the passage of any law which it may deem necessary or advisable to guard the health or morals of its citizens, although such law may discourage importation, or diminish the profits of the importer, or lessen the revenue of the general government. And if any State deems the retail and internal traffic in ardent spirits injurious to its citizens, and calculated to produce idleness, vice, or debauchery, I see nothing in the Constitution of the United States to prevent it from regulating and restraining the traffic, or from prohibiting it altogether, if it thinks proper."

The New Hampshire case, the Chief Justice observed, differs from *Brown* v. *Maryland*, in that the latter was a case arising out of commerce with foreign nations, which Congress had

regulated by law; whereas, the case in hand was one of commerce between two States, in relation to which Congress had not exercised its power:

"But the law of New Hampshire acts directly upon an import from one State to another, while in the hands of the importer for sale, and is therefore a regulation of commerce, acting upon the article while it is within the admitted jurisdiction of the general government, and subject to its control and regulation. The question, therefore, brought up for decision is whether a State is prohibited by the Constitution of the United States from making any regulations of foreign commerce or of commerce with another State, although such regulation is confined to its own territory and made for its own convenience or interest, and does not come in conflict with any law of Congress. In other words, whether the grant of power to Congress is of itself a prohibition to the States, and renders all State laws upon the subject null and void."

He declares it to appear to him very clear—

"That the mere grant of power to the general government cannot, upon any just principles of construction, be construed to be an absolute prohibition to the exercise of any power over the same subject by the States. The controlling and supreme power over commerce with foreign nations and the several States is undoubtedly conferred upon Congress. Yet, in my judgment, the State may, nevertheless, for the safety or convenience of trade, or for the protection of the health of its citizens, make regulations of commerce for its own ports and harbors, and for its own territory; and such regulations are valid unless they come in conflict with a law of Congress."

He comments on the omission of any prohibition in terms and concludes that if, as he thinks—

"The framers of the Constitution (knowing that a multitude of minor regulations must be necessary, which Congress amid its great concerns could never find time to consider and provide) intended merely to make the power of the federal government supreme upon this subject over that of the States, then the omission of any prohibition is accounted for, and is consistent with the whole instrument. The supremacy of the laws of Congress, in cases of collision with State laws, is secured in the article which declares that the laws of Congress, passed in pursuance of the powers granted, shall be the supreme law; and it is only where both governments may legislate on the same subject that this article can operate."

And he considers that the legislation of Congress and the States has conformed to this construction from the foundation of the government, as exemplified in State laws in relation to pilots and pilotage, and health and quarantine laws.

But, conceding the weight properly to be ascribed to the judicial utterances of this eminent jurist, we are constrained

to say that the distinction between subjects in respect of which there can be of necessity only one system or plan of regulation for the whole country, and subjects local in their nature, and, so far as relating to commerce, mere aids, rather than regulations, does not appear to us to have been sufficiently recognized by him in arriving at the conclusions announced. That distinction has been settled by repeated decisions of this Court, and can no longer be regarded as open to re-examination. After all, it amounts to no more than drawing the line between the exercise of power over commerce with foreign nations and among the States and the exercise of power over purely local commerce and local concerns. The authority of *Peirce* v. *New Hampshire,* in so far as it rests on the view that the law of New Hampshire was valid because Congress had made no regulation on the subject, must be regarded as having been distinctly overthrown by the numerous cases hereinafter referred to.

The doctrine now firmly established is, as stated by Mr. Justice FIELD, in *Bowman* v. *Railway Co.* (1888) 125 U. S. 507—

"That where the subject upon which Congress can act under its commercial power is local in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons and buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers, and docks, and the like, which can be properly regulated only by special provisions adapted to their localities, the State can act until Congress interferes and supersedes its authority; but where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the States, such as transportation between the States, including the importation of goods from one State into another, Congress can alone act upon it, and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free. Thus the absence of regulations as to interstate commerce with reference to any particular subject is taken as a declaration that the importation of that article into the States shall be unrestricted. It is only after the importation is completed, and the property imported is mingled with and becomes a part of the general property of the State, that its regulations can act upon it, except so far as may be necessary to insure safety in the disposition of the import until thus mingled."

The conclusion follows that, as the grant of the power to regulate commerce among the States, so far as one system is required, is exclusive, the States cannot exercise that power

without the assent of Congress, and, in the absence of legislation, it is left for the courts to determine when State action does or does not amount to such exercise, or, in other words, what is or is not a regulation of such commerce. When that is determined, controversy is at an end. Illustrations exemplifying the general rule are numerous. Thus we have held the following to be regulations of interstate commerce: A tax upon freight transported from State to State, *Case of the State Freight Tax*, (1873) 15 Wall. (82 U. S.) 232; a statute imposing a burdensome condition on ship-masters as a prerequisite to the landing of passengers, *Henderson* v. *Mayor, etc.* (1876), 92 U. S. 259; a statute prohibiting the driving or conveying of any Texas, Mexican, or Indian cattle, whether sound or diseased, into the State between the 1st day of March and the 1st day of November in each year, *Railroad Co.* v. *Husen*, (1878) 95 U. S. 465; a statute requiring every auctioneer to collect and pay into the State treasury, a tax on his sales, when applied to imported goods in the original packages by him sold for the importer, *Cook* v. *Pennsylvania*, (1878) 97 U. S. 566; a statute intended to regulate or tax, or to impose any other restriction upon the transmission of persons or property, or telegraphic messages, from one State to another, *Railway Co.* v. *Illinois*, (1886) 118 U. S. 557; a statute levying a tax upon non-resident drummers offering for sale or selling goods, wares, or merchandise by sample, manufactured or belonging to citizens of other States, *Robbins* v. *Taxing Dist.*, (1887) 120 U. S. 489.

On the other hand we have decided in, *County of Mobile* v. *Kimball*, (1881) 102 U. S. 691, that a State statute providing for the improvement of the river, bay, and harbor of Mobile, since what was authorized to be done was only as a mere aid to commerce, was, in the absence of action by Congress, not in conflict with the Constitution; in *Escanaba Co.* v. *Chicago*, (1883) 107 U. S. 678, that the State of Illinois could lawfully authorize the City of Chicago to deepen, widen, and change the channel of, and construct bridges over, the Chicago river; in *Transportation Co.* v. *Parkersburg*, (1883) 107 U. S. 691, that the jurisdiction and control of wharves properly belong to the States in which they are situated, unless otherwise

provided; in *Brown* v. *Houston* (1885), 114 U. S. 622, that a general state tax laid alike upon all property, is not unconstitutional, because it happens to fall upon goods which, though not then intended for exportation, are subsequently exported; in *Morgan's S. S. Co.* v. *Board of Health*, (1886) 118 U. S. 455, that a state law requiring each vessel passing a quarantine station to pay a fee for examination as to her sanitary condition, and the ports from which she came, was a rightful exercise of police power; in *Smith* v. *Alabama*, (1888) 124 U. S. 465, and in *Railway Co.* v. *Alabama*, (1888) 128 U. S. 96, that a statute requiring locomotive engineers to be examined and obtain a license was not in its nature a regulation of commerce; and in *Kimmish* v. *Call*, (1889) 129 U. S. 217, that a statute providing that a person having in his possession Texas cattle, which had not been wintered north of the southern boundary of Missouri at least one winter, shall be liable for any damages which may accrue from allowing them to run at large, and thereby spread the disease known as the Texas fever, was constitutional.

We held also in *Welton* v. *State*, (1876) 91 U. S. 275, that a State statute requiring the payment of a license tax from persons dealing in goods, wares, and merchandise, which are not the growth, product, or manufacture of the State, by going from place to place to sell the same in the State, and requiring no such license tax from persons selling in a similar way goods which are the growth, produce, or manufacture of the State, is an unconstitutional regulation; and to the same effect in *Walling* v. *Michigan*, (1886) 116 U. S. 446, in relation to a tax upon non-resident sellers of intoxicating liquors to be shipped into a State from places without it. But it was held in *Patterson* v. *Kentucky*, (1879) 97 U. S. 501, and in *Webber* v. *Virginia*, (1881) 103 U. S. 344, that the right conferred by the patent laws of the United States did not remove the tangible property in which an invention might take form in the operation of the laws of the State, nor restrict the power of the latter to protect the community from the direct danger inherent in particular articles.

In *Mugler* v. *Kansas* (1887), 123 U. S. 623, it was adjudged that—

"State legislation which prohibits the manufacture of spiritous, vinous,

fermented, or other intoxicating liquors within the limits of the State, to be there sold or bartered for general use as a beverage, does not necessarily infringe any right, privilege, or immunity secured by the Constitution of the United States, or by the Amendments thereto."

And this was in accordance with our decisions in *Bartemeyer* v. *Iowa*, (1874) 18 Wall. (85 U. S.) 129; *Beer Co.* v. *Massachusetts*, (1878) 97 U. S. 25; and *Foster* v. *Kansas*, (1884) 112 U. S. 201. So in *Kidd* v. *Pearson*, (1888) 128 U. S. 1, it was held that a State statute which provided (1) that foreign intoxicating liquors may be imported into the State, and there kept for sale by the importer, in the original packages, or for transportation in such packages and sale beyond the limits of the State, and (2) that intoxicating liquors may be manufactured and sold within the State for mechanical, medicinal, culinary, and sacramental purposes, but for no other, not even for the purpose of transportation beyond the limits of the State, was not an undertaking to regulate commerce among the States. And in *Eilenbecker* v. *District Court* (1890), 134 U. S. 31, we affirmed the judgment of the supreme court of Iowa, sustaining the sentence of the district court of Plymouth, in that State, imposing a fine of $500 and costs and imprisonment in jail for three months, if the fine was not paid within 30 days, as a punishment for contempt in refusing to obey a writ of injunction issued by that court, enjoining and restraining the defendant from selling or keeping for sale any intoxicating liquors, including ale, wine, and beer, in Plymouth county. Mr. Justice MILLER there remarked:

"If the objection to the statute is that it authorizes a proceeding in the nature of a suit in equity to suppress the manufacture and sale of intoxicating liquors which are by law prohibited, and to abate the nuisance which the statute declares such acts to be, wherever carried on, we respond that, so far as at present advised, it appears to us that all powers of a court, whether at common law or in chancery, may be called into operation by a legislative body for the purpose of suppressing this objectionable traffic: and we know of no hindrance in the Constitution of the United States to the form of proceedings, or to the court in which this remedy shall be had. Certainly it seems to us to be quite as wise to use the processes of the law and the powers of a court to prevent the evil, as to punish the offense as a crime after it has been committed."

These decisions rest upon the undoubted right of the States of the Union to control their purely internal affairs, in doing

which they exercise powers not surrendered to the national government: but whenever the law of the State amounts essentially to a regulation of commerce with foreign nations or among the States, as it does when it inhibits, directly or indirectly, the receipt of an imported commodity, or its disposition before it has ceased to become an article of trade between one State and another, or another country and this, it comes in conflict with a power which, in this particular, has been exclusively vested in the general government, and is therefore void.

In *Mugler* v. *Kansas*, *supra*, the Court said that it could not—

"Shut out of view the fact, within the knowledge of all, that the public health, the public morals, and the public safety may be endangered by the general use of intoxicating drinks; nor the fact established by statistics accessible to every one, that the idleness, disorder, pauperism, and crime existing in the country are, in some degree at least, traceable to this evil."

And that—

"If in the judgment of the legislature [of a State] the manufacture of intoxicating liquors for the maker's own use, as a beverage, would tend to cripple, if it did not defeat, the effort to guard the community against the evils attending the excessive use of such liquors, it is not for the courts, upon their views as to what is best and safest for the community, to disregard the legislative determination of that question. * * * Nor can it be said that government interferes with or impairs any one's constitutional rights of liberty or of property, when it determines that the manufacture and sale of intoxicating drinks, for general or individual use, as a beverage, are or may become, hurtful to society, and constitute, therefore, a business in which no one may lawfully engage."

Undoubtedly it is for the legislative branch of the State governments to determine whether the manufacture of particular articles of traffic, or the sale of such articles, will injuriously affect the public, and it is not for Congress to determine what measure a State may properly adopt as appropriate or needful for the protection of the public morals, the public health, or the public safety; but, notwithstanding it is not vested with supervisory power over matters of local administration, the responsibility is upon Congress, so far as the regulation of interstate commerce is concerned, to remove the restriction upon the State in dealing with imported articles of

trade within its limits, which have not been mingled with the common mass of property therein, if in its judgment the end to be secured justifies and requires such action.

Prior to 1888, the statutes of Iowa permitted the sale of foreign liquors imported under the laws of the United States, provided the sale was by the importer in the original casks or packages, and in quantities not less than those in which they were required to be imported; and the provisions of the statute to this effect were declared by the Supreme Court of Iowa in *Pearson* v. *Distillery* (1887), 72 Iowa, 354, to be—

"Intended to conform the statute to the doctrine of the United States Supreme Court, announced in *Brown* v. *Maryland* (1827), 12 Wheat. (25 U. S.) 419, and *License Cases* (1847), 5 How. (46 U. S.) 504, so that the statute should not conflict with the laws and authority of the United States."

But that provision of the statute was repealed in 1888, and the law so far amended that we understand it now to provide that, whether imported or not, wine cannot be sold in Iowa except for sacramental purposes, nor alcohol except for specified chemical purposes, nor intoxicating liquors, including ale and beer, except for pharmaceutical and medicinal purposes, and not at all, except by citizens of the State of Iowa, who are registered pharmacists, and have permits obtained as prescribed by the statute, a permit being also grantable to one discreet person in any township where a pharmacist does not obtain it.

The plaintiffs in error are citizens of Illinois, and not pharmacists, and have no permit, but import into Iowa beer which they sell in original packages, as described. Under our decision in *Bowman* v. *Railway Co.*, *supra*, they had the right to import this beer into that State, and in the view which we have expressed they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State. Up to that point of time, we hold that, in the absence of Congressional permission to do so, the State had no power to interfere by seizure, or any other action, in prohibition of importation and sale by the foreign or nonresident importer.

Whatever our individual views may be as to the deleterious or dangerous qualities of particular articles, we cannot hold that any articles which Congress recognizes as subjects of interstate commerce are not such, or that whatever are thus recognized can be controlled by State laws amounting to regulations, while they retain that character; although, at the same time if directly dangerous in themselves, the State may take appropriate measures to guard against injury before it obtains complete jurisdiction over them. To concede to a State the power to exclude, directly or indirectly, articles so situated, without congressional permission, is to concede to a majority of the people of a State, represented in the State legislature, the power to regulate commercial intercourse between the States, by determining what shall be its subjects, when that power was distinctly granted to be exercised by the people of the United States, represented in Congress, and its possession by the latter was considered essential to that more perfect Union which the Constitution was adopted to create. Undoubtedly there is difficulty in drawing the line between the municipal powers of the one government and the commercial powers of the other, but when that line is determined, in the particular instance, accomodation to it, without serious inconvenience, may readily be found, to use the language of Mr. Justice JOHNSON in *Gibbons* v. *Ogden* (1824), 9 Wheat. (22 U. S.) 1,238, in "a frank and candid co-operation for the general good." The legislation in question is to the extent indicated, repugnant to the Third Clause of Section Eight, Article One, of the Constitution of the United States, and therefore the judgment of the Supreme Court of Iowa is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

GRAY, J. Mr. Justice HARLAN, Mr. Justice BREWER, and myself are unable to concur in this judgment. As our dissent is based on the previous decisions of this Court, the respect due to our associates, as well as to our predecessors, induces us to state our position, as far as possible, in the words in which the law has been heretofore declared from this bench.

The facts of the case, and the substance of the statutes

whose validity is drawn in question, may be briefly stated. It was an action of replevin of sundry kegs and cases of beer, begun in an inferior court of the State of Iowa against a constable of Lee County, in Iowa, who had seized them at Keokuk, in that County, under a search-warrant issued by a Justice of the Peace, pursuant to the statutes of Iowa, which prohibit the sale, the keeping for sale, or the manufacture for sale, of any intoxicating liquor (including malt liquor) for any purpose whatever, except for pharmaceutical, medicinal, chemical, or sacramental purposes, and under an annual license granted by the district court of the proper county, upon being satisfied that the applicant is a citizen of the United States and of the State of Iowa, and a resident of the county, and otherwise qualified.

The plaintiffs were citizens and residents of the State of Illinois, engaged as brewers in manufacturing beer at Peoria, in that State, and in selling it in the States of Illinois and Iowa. The beer in question was manufactured by them at Peoria, and there put up by them in said kegs and cases; each keg being sealed, and having upon it, over the plug at the opening, a United States internal revenue stamp; and each case being substantially made of wood, containing two dozen quart bottles of beer, and sealed with a metallic seal, which had to be broken in order to open the case. The kegs and cases owned by the plaintiffs, and so sealed, were transported by them from Peoria by railway to Keokuk, and there sold and offered for sale by their agent, in a building owned by one of them, and without breaking or opening the kegs or cases.

The Supreme Court of Iowa having given judgment for the defendant, the question presented by this writ of error is whether the statutes of Iowa, as applied to these facts, contravene Section Eight of Article One, or Section Two of Article Four of the Constitution of the United States, or Section One of Article Fourteen of the Amendments to the Constitution.

By Section Eight of Article One of the Constitution—

"The Congress shall have power," among other things, "to regulate commerce with foreign nations, and among the several States," and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

By Section Two of Article Four—

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

By Section One of the Fourteenth Amendment—

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

By the Tenth Amendment—

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

Among the powers thus reserved to the several States, is what is commonly called the "police power,"—that inherent and necessary power, essential to the very existence of civil society, and the safeguard of the inhabitants of the State against disorder, disease, poverty, and crime.

"The police power belonging to the States in virtue of their general sovereignty," said Mr. Justice STORY, delivering the judgment of this Court, "extends over all subjects within the territorial limits of the States, and has never been conceded to the United States." *Prigg* v. *Pennsylvania* (1842), 16 Pet. (41 U. S.) 539, 625.

This is well illustrated by the recent adjudications, that a statute, prohibiting the sale of illuminating oils below a certain fire test, is beyond the constitutional power of Congress to enact, except so far as it has effect within the United States (as, for instance, in the District of Columbia) and without the limits of any State; but that it is within the constitutional power of a State to pass such a statute, even as to oils manufactured under letters patent from the United States: *U. S.* v. *DeWitt* (1869), 9 Wall. (76 U. S.) 41; *Patterson* v. *Kentucky* (1878), 97 U. S. 501.

The police power includes all measures for the protection of the life, the health, the property, and the welfare of the inhabitants, and for the promotion of good order and the public morals. It covers the suppression of nuisances, whether injurious to the public health, like unwholesome trades, or to the public morals, like gambling-houses and lottery tickets:

Slaughter-House Cases (1872), 16 Wall. (84 U. S.) 36, 62, 87; *Fertilizing Co.* v. *Hyde Park* (1877), 97 U. S. 659; *Phalen* v. *Virginia* (1850), 8 How. (49 U. S.) 163, 168; *Stone* v. *Mississippi* (1879), 101 U. S. 814.

This power being essential to the maintenance of the authority of local government, and to the safety and welfare of the people, is inalienable. As was said by Chief Justice WAITE, referring to earlier decisions to the same effect:—

"No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants. The supervision of both these subjects of governmental power is continuing in its nature, and they are to be dealt with as the special exigencies of the moment may require. Government is organized with a view to their preservation, and cannot divest itself of the power to provide for them. For this purpose, the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself." *Stone* v. *Mississippi* (1879), 101 U. S. 814, 819.

See, also, *Butchers' Union, etc., Co.* v. *Crescent City, etc., Co.* (1884), 111 U. S. 746, 753; *New Orleans Gas Co.* v. *Louisiana Light Co.* (1885), 115 U. S. 650, 672; *New Orleans* v. *Houston* (1886), 119 U. S. 265, 275.

The police power extends not only to things intrinsically dangerous to the public health, such as infected rags or diseased meat, but to things which, when used in a lawful manner, are subjects of property and commerce, and yet may be used so as to be injurious or dangerous to the life, the health, or the morals of the people. Gunpowder, for instance, is a subject of commerce, and of lawful use; yet, because of its explosive and dangerous quality, all admit that the State may regulate its keeping and sale. And there is no article, the right of the State to control or prohibit the sale or manufacture of which within its limits, is better established than intoxicating liquors: *License Cases* (1847), 5 How. (46 U. S.) 504; *Downham* v. *Alexandria Council* (1869), 10 Wall. (77 U. S.) 173; *Bartemeyer* v. *Iowa* (1873), 18 Wall. (85 U. S.) 129; *Beer Co.* v. *Massachusetts* (1877), 97 U. S. 25; *Tiernan* v. *Rinker* (1880), 102 Id. 123; *Foster* v. *Kansas* (1884), 112 U. S. 201; *Mugler* v. *Kansas* and *Kansas* v. *Ziebold* (1887), 123 Id. 623; *Kidd* v. *Pearson* (1888), 128 U. S. 1; *Eilenbecker* v. *District Court* (1890), 134 U. S. 31.

In *Beer Co.* v. *Massachusetts* above cited, this Court affirming the judgment of the Supreme Judicial Court of Massachusetts, reported in 115 Mass. 153, held that a statute of the State, prohibiting the manufacture and sale of intoxicating liquors, including malt liquors, except as therein provided, applied to a corporation which the State had long before chartered, and authorized to hold real and personal property, for the purpose of manufacturing malt liquors. Among the reasons assigned by this Court for its judgment were the following:—

"If the public safety or the public morals require the discontinuance of any manufacture or traffic, the hand of the legislature cannot be stayed from providing for its discontinuance, by any incidental inconvenience which individuals or corporations may suffer. All rights are held subject to the police power of the State. Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health, and property of the citizens, and to the preservation of good order and the public morals. The legislature cannot, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, *salus populi suprema lex;* and they are to be attained and provided for by such appropriate means as the legislative discretion may devise. That discretion can no more be bargained away than the power itself. Since we have already held, in the case of *Bartemeyer* v. *Iowa*, that as a measure of police regulation, looking to the preservation of public morals, a State law prohibiting the manufacture and sale of intoxicating liquors is not repugnant to any clause of the Constitution of the United States, we see nothing in the present case than can afford any sufficient ground for disturbing the decision of the Supreme Court of Massachusetts:" (97 U. S. 32,33).

In *Mugler* v. *Kansas* and *Kansas* v. *Ziebold*, above cited, a statute of Kansas, prohibiting the manufacture or sale of intoxicating liquors as a beverage, and declaring all places where such liquors were manufactured or sold in violation of the statute to be common nuisances, and prohibiting their future use for the purpose, was held to be a valid exercise of the police power of the State, even as applied to persons who, long before the passage of the statute, had constructed buildings specially adapted to such manufacture. It has also been adjudged that neither the grant of a license to sell intoxicating liquors, nor the payment of a tax on such

liquors under the internal revenue laws of the United States, affords any defense to an indictment by a State for selling the same liquors contrary to its statutes: *License Tax Cases* (1866), 5 Wall. (72 U. S.) 462; *Peryear* v. *Com.* (1866), Id. 475.

The clause of the Constitution, which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," has no bearing upon this case. The privileges and immunities thus secured are those fundamental rights and privileges which appertain to citizenship: *Conner* v. *Elliott* (1855), 18 How. (59 U. S.) 591, 593; CURTIS, J., in *Scott* v. *Sanford* (1856), 19 How. (60 U. S.) 393, 580; *Paul* v. *Virginia* (1868), 8 Wall. (75 U. S.) 168, 180; *McCready* v. *Virginia* (1876), 94 U. S. 391, 395. As observed by the Court in *Bartemeyer* v. *Iowa*":—

"The right to sell intoxicating liquors, so far as such a right exists, is not one of the rights growing out of citizenship of the United States:" (18 Wall. 133).

Nor is the case affected by the Fourteenth Amendment of the Constitution. As was said in the unanimous opinion of this Court in *Barbier* v. *Connolly*, after stating the true scope of that Amendment:—

"But neither the Amendment,—broad and comprehensive as it is,—nor any other Amendment, was designed to interfere with the power of the State, sometimes termed its 'police power,' to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity:" (113 U. S. 27, 31).

Upon that ground, the Amendment has been adjudged not to apply to a State statute prohibiting the sale or manufacture of intoxicating liquors in buildings long before constructed for the purpose, or the sale of oleomargarine lawfully manufactured before the passage of the statute: *Mugler* v. *Kansas* (1887), 123 U. S. 623, 663; *Powell* v. *Pennsylvania* (1887), 127 U. S. 678, 683, 687.

The remaining and the principal question is whether the statutes of Iowa, as applied to the sale within that State of intoxicating liquors in the same cases or kegs, unbroken and unopened, in which they were brought by the seller from another State, is repugnant to the clause of the Constitution granting

to Congress the power to regulate commerce with foreign nations and among the several States.

In the great and leading case of *Gibbons* v. *Ogden* (1824), 9 Wheat. (22 U. S.) 1, the point decided was that acts of the Legislature of New York, granting to certain persons for a term of years the exclusive navigation by steamboats of all waters within the jurisdiction of the State, were, so far as they affected such navigation by vessels of other persons licensed under the laws of the United States, repugnant to the clause of the Constitution empowering Congress to regulate foreign and interstate commerce. Chief Justice MARSHALL, in delivering judgment, after speaking of the inspection laws of the States, and observing that they had a remote and considerable influence on commerce, but that the power to pass them was not derived from a power to regulate commerce, said :—

"They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the general government,—all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, etc., are component parts of this mass. No direct general power over these objects is granted to Congress; and, consequently, they remain subject to State legislation. If the legislative power of the Union can reach them, it must be for national purposes; it must be where the power is expressly given for a special purpose, or is clearly incidental to some power which is expressly given:" (Pages 203, 204).

Again, he said that quarantine and health laws "are considered as flowing from the acknowledged power of a State to provide for the health of its citizens," and that the constitutionality of such laws had never been denied: (Page 205).

Mr. Justice JOHNSON, in his concurring opinion, said :—

"It is no objection to the existence of distinct, substantive powers that, in their application, they bear upon the same subject. The same bale of goods, the same cask of provisions, or the same ship that may be the subject of commercial regulation may also be the vehicle of disease. And the health laws that require them to be stopped and ventilated are no more intended as regulations on commerce than the laws which permit their importation are intended to inoculate the community with disease. Their different purposes mark the distinction between the powers brought into action, and, while frankly exercised, they can produce no serious collision:" (Page 235).

That Chief Justice MARSHALL, and his associates did not consider the constitutional grant of power to Congress to regulate foreign and interstate commerce, as, of its own force, and without national legislation, impairing the police power of each State within its own borders to protect the health and welfare of its inhabitants, is clearly indicated in the passages above quoted from the opinions in *Gibbons* v. *Ogden*, and is conclusively proved by the unanimous judgment of the Court delivered by the Chief Justice, five years later, in *Willson* v. *Marsh Co.* (1829), 2 Pet. (27 U. S.) 245. In that case, the Legislature of Delaware had authorized a dam to be erected across a navigable tide-water creek which opened into Delaware bay, thereby obstructing the navigation of the creek by a vessel enrolled and licensed under the navigation laws of the United States. The decision in *Gibbons* v. *Ogden* was cited by counsel as conclusive against the validity of the statute of the State. But its validity was upheld by the Court, for the following reasons :—

"The act of assembly, by which the plaintiffs were authorized to construct their dam, shows plainly that this is one of those many creeks, passing through a deep, level marsh adjoining the Delaware, up which the tide flows some distance. The value of the property on its banks must be enhanced by excluding the water from the marsh, and the health of the inhabitants probably improved. Measures calculated to produce these objects, provided they do not come into collision with the powers of the general government, are undoubtedly within those which are reserved to the States. But the measure authorized by this act stops a navigable creek, and must be supposed to abridge the rights of those who have been accustomed to use it. But this abridgment, unless it comes in conflict with the Constitution or a law of the United States, is an affair between the government of Delaware and its citizens, of which this court can take no cognizance. The counsel for the plaintiffs in error insists that it comes in conflict with the power of the United States 'to regulate commerce with foreign nations and among the several States.' If Congress had passed any act which bore upon the case; any act in execution of the power to regulate commerce, the object of which was to control State legislation over those small navigable creeks into which the tide flows, and which abound throughout the lower country of the middle and southern States,—we should feel not much difficulty in saying that a State law coming in conflict with such act, would be void. But Congress has passed no such act. The repugnancy of the law of Delaware to the Constitution is placed entirely on its repugnancy to the power to regulate commerce with foreign nations and among the several States,—a power which has not been so exercised as to affect the question. We do not think that

the act empowering the Blackbird Creek Marsh Company to place a dam across the creek can, under all the circumstances of the case, be considered as repugnant to the power to regulate commerce in its dormant state, or as being in conflict with any law passed on the subject:" (2 Pet. 251, 252).

In *Brown* v. *Maryland* (1827), 12 Wheat. (25 U. S.) 419, the point decided was that an act of the Legislature of Maryland, requiring all importers of foreign goods by the bale or package, or of spirituous liquors, and "other persons selling the same by wholesale, bale or package, hogshead, barrel, or tierce," to first take out a license and pay $50 for it, and imposing a penalty for failure to do so, was, as applied to sales by an importer of foreign liquors in the original packages, unconstitutional, both as laying an impost, and as repugnant to the power of Congress to regulate foreign commerce. The statute there in question was evidently enacted to raise revenue from importers of foreign goods of every description, and was not an exercise of the police power of the State. And Chief Justice MARSHALL, in answering an argument of counsel, expressly admitted that the power to direct the removal of gunpowder, or the removal or destruction of infectious or unsound articles which endanger the public health, "is a branch of the police power, which unquestionably remains and ought to remain with the States:" (Pages 443, 444). Moreover, the question there presented and decided concerned foreign commerce only, and not commerce among the States. Chief Justice MARSHALL, at the outset of his opinion so defined it, saying:—

"The cause depends entirely on the question whether the legislature of a State can constitutionally require the importer of foreign articles to take out a license from the State, before he shall be permitted to sell a bale or package so imported:" (Page 436).

It is true that, after discussing and deciding that question, he threw out this brief remark:—

"It may be proper to add that we suppose the principles laid down in this case to apply equally to importations from a sister State:" (Page 449).

But this remark was *obiter dictum*, wholly aside from the question before the Court, and having no bearing on its decision, and therefore extra-judicial, as has since been noted by

Chief Justice TANEY and Mr. Justice MCLEAN in the *License Cases* (1847), 5 How. (46 U. S.) 504, 575, 578, 594; and by Mr. Justice MILLER in *Woodruff* v. *Parham* (1869), 8 Wall. (75 U. S.) 123, 139. To a remark made under such circumstances, are peculiarly applicable the warning words of Chief Justice MARSHALL himself in an earlier case, where, having occasion to explain away some *dicta* of his own in delivering judgment in *Marbury* v. *Madison* (1803), 1 Cranch. (5 U. S.) 137, he said:—

"It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles, which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated: *Cohens* v. *Virginia* (1821), 6 Wheat. (19 U. S.) 264, 399, 400."

Another striking instance in which that maxim has been applied and acted on, is to be found in the opinion of the Court at the present term in *Hans* v. *Louisiana* (1890), 134 U. S. 1, 20.

But the unanimous judgment of this court in 1847, in *Peirce* v. *New Hampshire*, reported together with *Thurlow* v. *Massachusetts* and *Fletcher* v. *Rhode Island* as the *License Cases* (1847), 5 How. (46 U. S.) 504, is directly in point, and appears to us conclusively to govern the case at bar. Those cases were elaborately argued by eminent counsel, and deliberately considered by the Court, and Chief Justice TANEY, as well as each of six associate Justices, stated his reasons for concurring in the judgment. The cases from Massachusetts and Rhode Island arose under statutes of either State prohibiting sales of spirituous liquors by any person, in less than certain quantities, without first having obtained an annual license from municipal officers,—in the one case from county commissioners, who by the express terms of the statute were not required to grant any licenses when in their opinion the public good did not require them to be granted; and in the other case, from a town council, who were forbidden to grant licenses

whenever the voters of the town in town-meeting decided that none should be granted: Rev. St. Mass. 1836, c. 47, §§ 3, 17, 23–25; St. 1837, c. 242, § 2; Pub. Laws R. I. 1844, p. 496, § 4; Laws 1845, p. 72; 5 How. (46 U. S.) 506–510, 540. Those statutes were held to be constitutional, as applied to foreign liquors which had passed out of the hands of the importer; while it was assumed that, under the decision in *Brown* v. *Maryland*, those statutes could be allowed no effect as to such liquors while they remained in the hands of the importer in the original packages upon which duties had been paid to the United States: 5 How. (46 U. S.) 576, 590, 610, 618.

The case of *Peirce* v. *New Hampshire* directly involved the validity, as applied to liquors brought in from another State, of a statute of New Hampshire, which imposed a penalty on any person selling any wine, rum, gin, brandy, or other spirits, in any quantity, "without license from the selectmen of the town or place where such person resides:" Laws N. H. 1838, c. 369; 5 How. 555. The plaintiffs in error, having been indicted under that statute for selling to one Aaron Sias, in the town of Dover, in the State of New Hampshire, one barrel of gin without license from the selectmen of the town, at the trial admitted that they so sold to him a barrel of American gin; and introduced evidence that the barrel of gin was purchased by the defendants in Boston, in the Commonwealth of Massachusetts, brought coastwise to the landing at Piscataqua bridge, and from thence to the defendants' store in Dover, and afterwards sold to Sias in the same barrel and in the same condition in which it was purchased in Massachusetts. The defendants contended that the statute was unconstitutional, because it was "in violation of certain public treaties of the United States with Holland, France and other countries, containing stipulations for the admission of spirits into the United States;" and because it was repugnant to the clauses of the Constitution of the United States, restricting the power of the States to lay duties on imports or exports, and granting the power to Congress to regulate commerce with foreign nations and among the several States. Chief Justice PARKER instructed the jury—

"That this State could not regulate commerce between this and other States; that this State could not prohibit the introduction of articles from another State with such a view, nor prohibit a sale of them with such a purpose; but that, although the State could not make such laws with such views and for such purposes, she was not entirely forbidden to legislate in relation to articles introduced from foreign countries, or from other States; that she might tax them the same as other property, and might regulate the sale to some extent; that a State might pass health and police laws, which would, to a certain extent, affect foreign commerce, and commerce between the States; and that this statute was a regulation of that character, and constitutional."

After a verdict of guilty, exceptions to this instruction were overruled by the highest court of the State: 5 How. (46 U. S.) 554–557; 13 N. H. 536. In that case, as in the case at bar, the statute of the State prohibited sales of intoxicating liquors by any person without a license from municipal authorities, and authorized licenses to be granted only to persons residing within the State; and the liquors were sold within the State by the importer, and in the same barrel, keg, or case, unbroken and in the same condition in which he had brought them from another State. Yet the judgment of the highest Court of New Hampshire was unanimously affirmed by this Court. Chief Justice TANEY, Mr. Justice CATRON, and Mr. Justice NELSON were of opinion that the statute of New Hampshire was a regulation of interstate commerce, but yet valid, so long as it was not in conflict with any act of Congress. Chief Justice TANEY, after recognizing that:—

"Spirits and distilled liquors are universally admitted to be subjects of ownership and property, and are therefore subjects of exchange, barter, and traffic, like any other commodity in which a right of property exists; and Congress, under its general power to regulate Commerce with foreign nations, may prescribe what articles of merchandise shall be admitted and what excluded, and may therefore admit or not, as it shall deem best, the importation of ardent spirits; and, inasmuch as the laws of Congress authorize their importation, no State has a right to prohibit their introduction."

And yet upholding the validity of the statutes of Massachusetts and Rhode Island, as not interfering with the trade in ardent spirits while they remained a part of foreign commerce, and were in the hands of the importer for sale, in the cask or vessel in which the laws of Congress authorized them to be imported (page 577), proceeded to state the case from New Hampshire as follows:—

"The present case, however, differs from *Brown* v. *Maryland* in this: that the former was one arising out of commerce with foreign nations, which Congress had regulated by law; whereas, the present is a case of commerce between two States, in relation to which Congress has not exercised its power. Some acts of Congress have, indeed, been referred to in relation to the coasting trade. But they are evidently intended merely to prevent smuggling, and do not regulate imports or exports from one State to another. This case differs also from the cases of Massachusetts and Rhode Island; because, in these two cases, the laws of the States operated upon the articles after they had passed beyond the limits of foreign commerce, and consequently were beyond the control and power of Congress. But the law of New Hampshire acts directly upon an import from one State to another, while in the hands of the importer for sale, and is therefore a regulation of commerce, acting upon the article while it is within the admitted jurisdiction of the general government, and subject to its control and regulation:" (Page 578).

And he concluded his opinion thus:—

"Upon the whole, therefore, the law of New Hampshire is, in my judgment, a valid one; for, although the gin sold was an import from another State, and Congress have clearly the power to regulate such importations, under the grant of power to regulate commerce among the several States, yet, as Congress has made no regulation on the subject, the traffic in the article may be lawfully regulated by the State as soon as it is landed in its territory, and a tax imposed upon it, or a license required, or the sale altogether prohibited, according to the policy which the State may suppose to be its interest or duty to pursue." (Page 586).

Mr. Justice CATRON expressed similar views. While he was of opinion that the ultimate right of determining what commodities might be lawful subjects of interstate commerce belonged to Congress in the exercise of its power to regulate commerce, and not to the States in the exercise of the police power, he was equally clear that the statute of New Hampshire was a valid regulation, in the absence of any legislation upon the subject by Congress. After pointing out the difficulties standing in the way of any attempt by Congress to make the special and various regulations required at different places at the maritime or inland borders of the States, he said:

"I admit that this condition of things does not settle the question of contested power; but it satisfactorily shows that Congress cannot do what the States have done, are doing, and must continue to do, from a controlling necessity, even should the exclusive power in Congress be maintained by our decision:" (Page 606). "Congress has stood by for nearly sixty years, and seen the States regulate the commerce of the whole country, more or less, at the ports of entry and at all their borders, without objec-

tion; and for this Court now to decide that the power did not exist in the States, and that all they had done in this respect was void from the beginning, would overthrow and annul entire codes of State legislation on the particular subject. We would by our decision expunge more State laws and city corporate regulations than Congress is likely to make in a century on the same subject; and on no better assumption than that Congress and the State legislatures had been altogether mistaken as to their respective powers for fifty years and more. If long usage, general acquiescence, and the absence of complaint, can settle the interpretation of the clause in question, then it should be deemed as settled in conformity to the usage by the Courts:" (Page 607).

And finally, in summing up his conclusions, he said:—

"That the law of New Hampshire was a regulation of commerce among the States in regard to the article for selling of which the defendants were indicted and convicted; but that the State law was constitutionally passed, because of the power of the State thus to regulate; there being no regulation of Congress, special or general, in existence, to which the State law was repugnant:" (Pages 608, 609).

Mr. Justice NELSON expressed his concurrence in the opinions delivered by the Chief Justice and Mr. Justice CATRON: (Page 618). Justices MCLEAN, DANIEL, WOODBURY and GRIER, on the other hand, were of opinion that the license laws of New Hampshire, as well as those of Massachusetts and Rhode Island, were merely police regulations, and not regulations of commerce, although they might incidentally affect commerce. Mr. Justice MCLEAN, in the course of his opinion in *Thurlow* v. *Massachusetts*, said:—

"The license acts of Massachusetts do not purport to be a regulation of commerce. They are essentially police laws. Enactments similar in principle are common to all the States. Since the adoption of its Constitution they have existed in Massachusetts:" (Page 588). [St. Mass. 1786, c. 68; 1792, c. 25; 7 Dane, Abr. 43, 44] "It is the settled construction of every regulation of commerce that, under the sanction of its general laws, no person can introduce into a community malignant diseases, or anything which contaminates its morals, or endangers its safety. And this is an acknowledged principle applicable to all general regulations. Individuals in the enjoyment of their own rights must be careful not to injure the rights of others. From the explosive nature of gunpowder, a city may exclude it. Now, this is an article of commerce, and is not known to carry infectious disease; yet, to guard against a contingent injury, a city may prohibit its introduction. These exceptions are always implied in commercial regulations, where the general government is admitted to have the exclusive power. They are not regulations of com-

merce, but acts of self-preservation. And, though they affect commerce to some extent, yet such effect is the result of the exercise of an undoubted power in the State:" (Pages 589, 590). "A discretion on this subject must be exercised somewhere, and it can be exercised nowhere but under the State authority. The State may regulate the sale of foreign spirits, and such regulation is valid, though it reduce the quantity of spirits consumed. This is admitted. And how can this discretion be controlled? The powers of the General Government do not extend to it. It is in every respect a local regulation, and relates exclusively to the internal police of the State:" (Page 591). "The police power of a State and the foreign commercial power of Congress must stand together. Neither of them can be so exercised as materially to affect the other. The sources and objects of these powers are exclusive, distinct, and independent, and are essential to both governments:" (Page 592).

In his opinion in *Peirce* v. *New Hampshire*, he declared that the same views were equally applicable to that case, and added:—

"The tax in the form of a license, as here presented, counteracts no policy of the Federal Government, is repugnant to no power it can exercise, and is imposed by the exercise of an undoubted power in the State. The license system is a police regulation, and, as modified in the State of New Hampshire, was designed to restrain and prevent immoral indulgences, and to advance the moral and physical welfare of society. If this tax had been laid on the property as an import into the State, the law would have been repugnant to the Constitution. It would have been a regulation of commerce among the States, which has been exclusively given to Congress. But this barrel of gin, like all other property within the State of New Hampshire, was liable to taxation by the State. It comes under the general regulation, and cannot be sold without a license. The right of an importer of ardent spirits to sell in the cask without a license, does not attach to the plaintiffs in error, on account of their having transported this property from Massachusetts to New Hampshire:" (Pages 595, 596).

Mr. Justice DANIEL said:—

"The license laws of Massachusetts, Rhode Island, and New Hampshire, now under review, impose no exaction on foreign commerce. They are laws simply determining the mode in which a particular commodity may be circulated within the respective jurisdictions of those States, vesting in their domestic tribunals a discretion in selecting the agents for such circulation, without discriminating between the sources whence commodities may have been derived. They do not restrict importation to any extent; they do not interfere with it, either in appearance or reality; they do not prohibit sales, either by wholesale or retail; they assert only the power of regulating the latter, but this entirely within the sphere of their

peculiar authority. These laws are therefore in violation neither of the Constitution of the United States, nor of any law nor treaty made in pursuance or under authority of the Constitution:" (Page 617).

Mr. Justice WOODBURY repeated and enforced the same views, saying, among other things:—

"It is manifest, also, whether as an abstract proposition or practical measure, that a prohibition to import is one thing, while a prohibition to sell without license is another and entirely different. The first would operate on foreign commerce, on the voyage. The latter affects only the internal business of the State after the foreign importation is completed and on shore:" (Page 619). "The subject of buying and selling within a State is one as exclusively belonging to the power of the State over its internal trade as that to regulate foreign commerce is with the General Government, under the broadest construction of that power. The idea, too, that a prohibition to sell would be tantamount to a prohibition to import does not seem to me either logical or founded in fact. For, even under a prohibition to sell, a person could import, as he often does, for his own consumption, and that of his family and plantations; and also if a merchant, extensively engaged in commerce, often does import articles with no view of selling them here, but of storing them for a higher and more suitable market in another State or abroad:" (Page 620). "But this license is a regulation neither of domestic commerce between the States, nor of foreign commerce. It does not operate on either, or the imports of either, till they have entered the State, and become component parts of its property. Then it has by the Constitution the exclusive power to regulate its own internal commerce and business in such articles, and bind all residents, citizens or not, by its regulations, if they ask its protection and privileges; and Congress, instead of being opposed and thwarted by regulations as to this, can no more interfere in it than the States can interfere in regulation of foreign commerce:" (Page 625). "Whether such laws of the States as to licenses are to be classed as police measures, or as regulations of their internal commerce, or as taxation merely imposed on local property and local business, and are to be justified by each or by all of them together, is of little consequence, if they are laws which from their nature and object must belong to all sovereign States. Call them by whatever name, if they are necessary to the well-being and independence of all communities, they remain among the reserved rights of the States, no express grant of them to the General Government having been either proper, or apparently embraced in the Constitution. So whether they conflict or not, indirectly and slightly, with some regulations of foreign commerce, after the subject matter of that commerce touches the soil or waters within the limits of a State, is not perhaps very material, if they do not really relate to that commerce, or any other topic within the jurisdiction of the General Government:" (Page 627).

Mr. Justice GRIER did not consider the question of the ex-

clusiveness of the power of Congress to regulate foreign and interstate commerce as involved in the decision, but maintained the validity of the statutes in question under "the police power, which is exclusively in the States:" (Pages 631, 632).

The other members of the Court at that time were Mr. Justice WAYNE and Mr. Justice MCKINLEY, who do not appear by the report to have taken part in the decision of those cases, although the former appears, at page 545, to have been present at the argument, and by the clerk's minutes to have been upon the bench when the judgments were delivered. It is certain that neither of them dissented from the decision of the Court.

The consequences of an opposite conclusion in the case from New Hampshire regarding liquors brought from one State into another were forcibly stated by several of the judges. Mr. Justice MCLEAN said:—

"If the mere conveyance of property from one State to another shall exempt it from taxation, and from general State regulation, it will not be difficult to avoid the police laws of any State, especially by those who live at or near the boundary." (Page 595).

Mr. Justice CATRON said:—

"To hold that the State license law was void, as respects spirits coming in from other States as articles of commerce, would open the door to an almost entire evasion, as the spirits might be introduced in the smallest divisible quantities that the retail trade would require; the consequence of which would be that the dealers in New Hampshire would sell only spirits produced in other States, and that the products of New Hampshire would find an unrestrained market in the neighboring States having similar license laws to those of New Hampshire:" (Page 608).

Mr. Justice WOODBURY said:—

"If the proposition was maintainable, that, without any legislation by Congress as to the trade between the States (except that in coasting, as before explained, to prevent smuggling), anything imported from another State, foreign or domestic, could be sold of right in the package in which it was imported, not subject to any license or internal regulation of a State, then it is obvious that the whole license system may be evaded and nullified, either from abroad or from a neighboring State. And the more especially can it be done from the latter, as imports may be made in bottles of any size, down to half a pint, of spirits or wines; and, if its sale cannot be interfered with and regulated, the retail business can be carried on in any small quantity, and by the most irresponsible and unsuitable persons, with perfect impunity:" (Pages 625, 626).

Mr. Justice GRIER, in an opinion marked by his characteristic vigor and directness of thought and expression (after saying that he mainly concurred with Mr. Justice MCLEAN), summed up the whole matter as follows :—

"The true question presented by these cases, and one which I am not disposed to evade, is, whether the States have a right to prohibit the sale and consumption of an article of commerce which they believe to be pernicious in its effects, and the cause of disease, pauperism, and crime. I do not consider the question of the exclusiveness of the power of Congress to regulate commerce as necessarily connected with the decision of this point. It has been frequently decided by this Court 'that the powers which relate to merely municipal regulations, or what may more properly be called "internal police," are not surrendered by the States, or restrained by the Constitution of the United States; and that, consequently, in relation to these, the authority of a State is complete, unqualified, and exclusive.' Without attempting to define what are the peculiar subjects or limits of this power, it may safely be affirmed that every law for the restraint and punishment of crime, for the preservation of the public peace, health, and morals, must come within this category. As subjects of legislation, they are from their very nature of primary importance; they lie at the foundation of social existence; they are for the protection of life and liberty, and necessarily compel all laws on subjects of secondary importance, which relate only to property, convenience, or luxury, to recede, when they come in conflict or collision: *salus populi suprema lex.* If the right to control these subjects be 'complete, unqualified, and exclusive' in the State legislatures, no regulations of secondary importance can supersede or restrain their operations, on any ground of prerogative or supremacy. The exigencies of the social compact require that such laws be executed before and above all others. It is for this reason that quarantine laws, which protect the public health, compel mere commercial regulations to submit to their control. They restrain the liberty of the passengers, they operate on the ship which is the instrument of commerce, and its officers and crew, the agents of navigation. They seize the infected cargo, and cast it overboard. The soldier and the sailor, though in the service of the government, are arrested, imprisoned, and punished for their offenses against society. Paupers and convicts are refused admission into the country. All these things are done, not from any power which the States assume to regulate commerce or to interfere with the regulations of Congress, but because police laws for the preservation of health, prevention of crime, and protection of the public welfare must of necessity have full and free operation, according to the exigency which requires their interference. It is not necessary, for the sake of justifying the State legislation now under consideration, to array the appalling statistics of misery, pauperism, and crime which have their origin in the use or abuse of ardent spirits. The police power, which is exclusively in the States, is alone competent to the correction of these great evils, and all measures of restraint or prohibition necessary to effect the purpose are

within the scope of that authority. There is no conflict of power, or of legislation, as between the States and the United States: each is acting within its sphere, and for the public good; and, if a loss of revenue should accrue to the United States from a diminished consumption of ardent spirits, she will be the gainer a thousand-fold in the health, wealth, and happiness of the people:" (Pages 631, 632).

This abstract of the License Cases shows (what is made yet clearer by an attentive reading of the opinions as a whole), that the difference of opinion among the Judges was upon the question whether the State statutes, which all agreed had some influence upon commerce, and all agreed were valid exercises of the police power, could properly be called regulations of commerce. While many of the judges said or assumed that a State could not restrict the sale by the importer and in the original packages of intoxicating liquors imported from a foreign country, which Congress had authorized the importation of, and had caused duties to be levied upon, all of them undoubtingly held that where Congress had not legislated, a State might, for the protection of the health, the morals, and the safety of its inhabitants, restrict or prohibit, at its discretion and according to its own views of policy, the sale by the importer of intoxicating liquors brought into it from another State, and remaining in the barrels or packages in which they were brought in.

The ability and thoroughness with which those cases were argued at the bar and on the Bench, the care and thought bestowed upon their consideration, as manifested in the opinions delivered by the several Judges, and the confidence with which each Judge expressed his concurrence in the result, make the decision of the highest possible authority. It has been accepted and acted on as such by the legislatures, the courts, and the People, of the nation and of the States, for forty years. It has not been touched by any act of Congress; it has guided the legislation of many of the States; and it has been treated as beyond question by this Court in a long series of cases: *Veazie* v. *Moore* (1852), 14 How. (55 U. S.) 568, 575; *Sinnot* v. *Davenport* (1859), 22 How. (63 U. S.) 227, 243; *Gilman* v. *Philadelphia* (1865), 3 Wall. (70 U. S.) 713, 730; *Pervear* v. *Com.* (1866), 5 Wall. (72 U. S.) 475, 479; *Woodruff* v.

Parham (1868), 8 Wall. (75 U. S.) 123, 139; *U. S.* v. *DeWitt* (1869), 9 Wall. (76 U. S.) 41, 45; *Henderson* v. *Mayor* (1875), 92 U. S. 259, 274; *Beer Co.* v. *Massachusetts* (1877), 97 Id. 25, 33; *Patterson* v. *Kentucky* (1878), Id. 501, 503; *Mobile Co.* v. *Kimball* (1880), 102 Id. 691, 701; *Brown* v. *Houston* (1885), 114 Id. 622, 631; *Walling* v. *Michigan* (1886), 116 Id. 446, 461; *Mugler* v. *Kansas* (1887), 123 Id. 623, 637, 657, 658.

In the *Passenger Cases* (1849), 7 How. (48 U. S.) 283, decided in 1849, two years after the License Cases, statutes of New York and Massachusetts, imposing taxes upon alien passengers arriving from abroad, were adjudged to be repugnant to the Constitution and laws of the United States, and therefore void, by the opinions of Justices McLEAN, WAYNE, CATRON, McKINLEY, and GRIER, against the dissent of Chief Justice TANEY and Justices DANIEL, NELSON, and WOODBURY, each of the Judges delivering a separate opinion. The decision in the License Cases was relied on by each of the dissenting Judges (pages 470, 483, 497, 518, 524, 559); and no doubt of the soundness of that decision was suggested in the opinions of the majority of the Court, or in any of the subsequent cases in which the judgment of that majority was afterwards approved and followed: *Henderson* v. *Mayor, and Commissioners* v. *North German Lloyd* (1875), 92 U. S., 259; *Chy Lung* v. *Freeman* (1876), Id. 275; *People* v. *Compagnie, etc.* (1883), 107 U. S. 59; *Head Money Cases* (1849), 112 U. S. 580.

When Mr. Justice GRIER, in the *Passenger Cases* (1849), 7 How. (48 U. S.) 462, said—

"And to what weight is that argument entitled which assumes that, because it is the policy of Congress to leave this intercourse free, therefore it has not been regulated, and each State may put as many restrictions upon it as she pleases?"—

the context shows that he had in mind cases in which the policy to leave commerce free had been manifested by statute or treaty, and he has already (page 457) made it manifest that he did not intend to retract or to qualify his opinion in the *License Cases.*

An intention on the part of Congress that commerce shall be free from the operation of laws passed by a State in the exercise of its police power cannot be inferred from the mere fact of there being no national legislation upon the subject, unless in matters as to which the power of Congress is exclusive. Where the power of Congress is exclusive, the States have, of course, no power to legislate; and it may be said that Congress, by not legislating, manifests an intention that there should be no legislation on the subject. But in matters over which the power of Congress is paramount only, and not exclusive, the power of the State is not excluded until Congress has legislated; and no intention that the States should not exercise, or continue to exercise, their power over the subject can be inferred from the want of Congressional legislation: *Transportation Co.* v. *Parkersburg* (1883), 107 U. S. 691, 702-704.

The true test for determining when the power of Congress to regulate commerce is, and when it is not, exclusive, was formulated and established in *Cooley* v. *Board of Wardens*, (1851), 12 How. (53 U. S.) 299, concerning the validity of a State law for the regulation of pilots and pilotage, in which Mr. Justice CURTIS, in delivering judgment, said:—

"When the nature of a power like this is spoken of, when it is said that the nature of the power requires that it should be exercised exclusively by Congress, it must be intended to refer to the subjects of that power, and to say they are of such a nature as to require exclusive legislation by Congress. Now, the power to regulate commerce embraces a vast field, containing not only many, but exceedingly various, subjects, quite unlike in their nature; some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port; and some, like the subject now in question, as imperatively demanding that diversity which alone can meet the local necessities of navigation. Either absolutely to affirm or deny that the nature of this power requires exclusive legislation by Congress is to lose sight of the nature of the subjects of this power, and to assert, concerning all of them, what is really applicable but to a part. Whatever subjects of this power are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress."

He then stated that the Act of Congress of August 7, 1789, c. 9, § 4 (1 St. 54), in regard to pilotage, manifested the under-

standing of Congress, at the outset of the Government, that the nature of the subject was not such as to require its exclusive legislation, but was such that, until Congress should find it necessary to exercise its power, it should be left to the legislation of the States, because it was local, and not national, and was likely to be best provided for, not by one system or plan of regulation, but by as many as the legislative discretion of the several States should deem applicable to the local peculiarities of the ports within their limits; and he added, in words which appear to us equally appropriate to the case now before the Court:—

"The practice of the States, and of the National Government, has been in conformity with this declaration, from the origin of the National Government to this time; and the nature of the subject, when examined, is such as to leave no doubt of the superior fitness and propriety, not to say the absolute necessity, of different systems of regulation, drawn from local knowledge and experience, and conformed to local wants. We are of opinion that this State law was enacted by virtue of a power residing in the State to legislate; that it is not in conflict with any law of Congress; that it does not interfere with any system which Congress has established by making regulations, or by intentionally leaving individuals to their own unrestricted action:" 12 How. (53 U. S.) 319–321.

In *Gilman* v. *Philadelphia* (1866), 3 Wall. (70 U. S.) 713, 730, this Court, speaking by Mr. Justice SWAYNE, applying the same test, and relying on *Willson* v. *Marsh Co.* and *Cooley* v. *Board of Wardens*, above cited, upheld the validity of a statute of Pennsylvania authorizing the construction of a bridge across the Schuylkill river, so as to prevent the passage of vessels with masts; and, after stating the points adjudged in *Brown* v. *Maryland*, and in the *Passenger Cases*, said:—

"But a State, in the exercise of its police power, may forbid spirituous liquor imported from abroad, or from another State, to be sold by retail, or to be sold at all, without a license; and it may visit the violation of the prohibition with such punishment as it may deem proper:" *License Cases*, 5 How. 504.

By the same test, and upon the authority of *Willson* v. *Marsh Co.*, a statute of Wisconsin, authorizing the erection of a dam across a navigable river, was held to be constitutional in *Pound* v. *Turck* (1878), 95 U. S. 459, 463. To the like effect

are *Bridge Co.* v. *Hatch* (1888), 125 U. S. 1, 8-12, and other cases there cited.

Upon like grounds, it was held, in *Mobile Co.* v. *Kimball* (1881), 102 U. S. 691, that a statute of Alabama, authorizing the improvement of the harbor of Mobile, did not trench upon the commercial power of Congress; and the Court, after pointing out that some expressions of Chief Justice MARSHALL, in *Gibbons* v. *Ogden*, as to the exclusiveness of the power of Congress to regulate commerce were restricted by the facts of that case, and by the subsequent judgment in *Willson* v. *Marsh Co.*, said :—

"In the *License Cases*, which were before the Court in 1847, there was great diversity of views in the opinions of the different Judges upon the operation of the grant of the commercial power of Congress in the absence of Congressional legislation. Extreme doctrines upon both sides of the question were asserted by some of the Judges; but the decision reached, so far as it can be viewed as determining any question of construction, was confirmatory of the doctrine that legislation of Congress is essential to prohibit the action of the States upon the subjects there considered:" (102 U. S. 700, 701).

In *Woodruff* v. *Parham* (1869), 8 Wall. (75 U. S.) 123, a State statute, imposing a uniform tax on all sales by auction within it, was held constitutional, as applied to sales of goods the product of other States, and sold in the original and unbroken packages.

In *Hinson* v. *Lott*, Id. 148, decided at the same time, it was adjudged that a State statute which prohibited any dealers, introducing any intoxicating liquors into the State, from offering them for sale, without first paying a tax of fifty cents a gallon, and imposed a like tax on liquors manufactured within the State, was valid, as applied to liquors brought from another State, and held and offered for sale in the same barrels or packages in which they were brought in; because, in the words of Mr. Justice MILLER, who delivered the opinion of the Court in both cases, it was not "an attempt to regulate commerce, but an appropriate and legitimate exercise of the taxing power of the State:" (8 Wall. 153). These two cases were cited by the Court in *Low* v. *Austin* (1872), 13 Wall. (80 U. S.) 29, 34, and in *Cook* v. *Pennsylvania* (1878), 97 U. S. 566, 573, in which, in accord with the opinions in the *License Cases*,

State taxation upon original cases of wines imported from a foreign country, and upon which duties had been paid under Acts of Congress, was held to be invalid.

In *Welton* v. *Missouri* (1876), 91 U. S. 275, the point decided was that a State statute, requiring the payment of a license tax from persons selling, by going from place to place within the State for the purpose, goods not the growth or manufacture of the State, and not from persons so selling goods which were the growth or manufacture of the State, was unconstitutional and void, by reason of the discrimination; and in *Machine Co.* v. *Gage* (1880), 100 U. S. 676, a State statute imposing a like tax, without discriminating as to the place of growth or produce of material or manufacture, was adjudged to be constitutional and valid, as applied to machines made in and brought from another State.

In *Brown* v. *Houston* (1885), 114 U. S. 622, it was decided that coal mined in Pennsylvania, and brought in boats by river from Pittsburgh to New Orleans, to be there sold by the boat-load on account of the Pennsylvania owner, and remaining afloat in its original condition and original packages, was subject, in common with all other property in the city, to taxation under the general tax laws of Louisiana; and the Court referred to *Woodruff* v. *Parham*, above cited, as upholding the validity of a "tax laid on auction sales of all property indiscriminately," and "which had no relation to the movement of goods from one State to another:" (114 U. S. 634).

In *Walling* v. *Michigan* (1886), 116 U. S. 446, the statute of Michigan, which was held to be an unconstitutional restraint of interstate commerce, imposed a different tax upon persons engaged within the State in the business of selling or soliciting the sale of intoxicating liquors to be sent into the State, from that imposed upon persons selling or soliciting the sale of such liquors, manufactured within the State; and the Court declared that the statute would be perfectly justified as:—

"An exercise by the legislature of Michigan of the police power of the State for the discouragment of the use of intoxicating liquors, and the preservation of the health and morals of the people, * * if it did not discriminate against the citizens and products of other States in a matter

of commerce between the States, and thus usurp one of the prerogatives of the national legislature:" (116 U. S. 460).

In *Railway Co.* v. *Illinois* (1886), 118 U. S. 557, the only point decided was that a State had no power to regulate the rates of freight of any part of continuous transportation upon railroads partly within the State and partly in other States. In *Robbins* v. *Taxing Dist.* (1887), 120 U. S. 489, a State law requiring the payment of a license tax by drummers and persons not having a regularly licensed house of business within the taxing district, offering for sale or selling any goods by sample, was decided to be unconstitutional as applied to persons offering to sell goods on behalf of merchants residing in other States, because, as the majority of the Court held, its effect was "to tax the sale of such goods, or the offer to sell them, before they are brought into the State:" (120 U. S. 497). Neither of those cases appears to us to tend to limit the police power of the State to protect the public health, the public morals, and the public peace within its own borders.

As was said by this Court in *Sherlock* v. *Alling* (1876), 93 U. S. 99, 103:—

"In conferring upon Congress the regulation of commerce, it was never intended to cut the States off, from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it, without constituting a regulation of it, within the meaning of the Constitution."

It was accordingly held in that case that an action against a carrier engaged in interstate commerce might be maintained under a State statute giving a civil remedy, unknown to the common law, for negligence causing death; and in subsequent cases that what a State might punish or afford redress for it might seek by proper precautions to prevent; and consequently that a State statute requiring, under a penalty, engineers of all railroad trains within the State to be examined and licensed by a State board, either as to their qualifications generally, or as to their capacity to distinguish between color signals, was not in its nature a regulation of commerce, but was a consti-

tutional exercise of the power reserved to the States, and intended to secure the safety of persons and property within their territorial limits, and, so far as it affected interstate commerce, not in conflict with any express enactment of Congress upon the subject, nor contrary to any intention of Congress to be presumed from its silence: *Smith* v. *Alabama* (1888), 124 U. S. 465; *Railway Co.* v. *Alabama* (1888), 128 U. S. 96.

In *Railroad Co.* v. *Husen* (1878), 95 U. S. 465, it was expressly conceded, in the opinion of the Court delivered by Mr. Justice STRONG, that a State, in the exercise of its police power, could "legislate to prevent the spread of crime or pauperism or disturbance of the peace," as well as "justify the exclusion of property, dangerous to the property of citizens of the State; for example, animals having contagious or infectious diseases:" (Id. 471). And the decision, by which the statute of Missouri, forbidding the introduction of any Texas, Mexican, or Indian cattle into the State, was held to be an unconstitutional interference with interstate commerce, rested, as clearly appears in the opinion in that case, and has since been distinctly recognized by the Court, upon the ground that the statute made no distinction in the transportation forbidden, between cattle which might be diseased and those which were not: *Kimmish* v. *Ball* (1889), 129 U. S. 217, 221.

The authority of the States, in the exercise of their police power, and for the protection of life and health, to pass laws affecting things which are lawful subjects or instruments of commerce, and even while they are actually employed in commerce, has been expressly recognized by Congress in the acts regulating the transportation of nitro-glycerine, as well as in the acts for the observation and execution of the quarantine and health laws of the States: Rev. St. §§ 4278-4280, 4792-4796.

In *Morgan's S. S. Co.* v. *Board of Health* (1886), 118 U. S. 455, 465, the system of quarantine laws established by the State of Louisiana was held, in accordance with earlier opinions, to be a constitutional exercise of the police power; and it was said by the Court:—

"Quarantine laws belong to that class of State legislation which,

whether passed with intent to regulate commerce or not, must be admitted to have that effect, and which are valid until displaced or contravened by some legislation of Congress. The matter is one in which the rules that should govern it may in many respects be different in different localities, and for that reason be better understood and more wisely established by the local authorities. The practice which should control a quarantine station on the Mississippi river, a hundred miles from the sea, may be widely and wisely different from that which is best for the harbor of New York."

It was added that, in this respect, the case fell within the principle of *Willson* v. *Marsh Co.; Cooley* v. *Board of Wardens; Gilman* v. *Philadelphia; Pound* v. *Turck*, and other cases.

In *Mugler* v. *Kansas* (1887), 123 U. S. 623, the Court said:

"In the *License Cases*, 5 How. 504, the question was whether certain statutes of Massachusetts, Rhode Island and New Hampshire, relating to the sale of spirituous liquors, were repugnant to the Constitution of the United States. In determining that question, it became necessary to inquire whether there was any conflict between the exercise by Congress of its power to regulate commerce with foreign countries, or among the several States, and the exercise by a State of what are called 'police powers.' Although the members of the Court did not fully agree as to the grounds upon which the decision should be placed, they were unanimous in holding that the statutes then under examination were not inconsistent with the Constitution of the United States, or with any Act of Congress:" (123 U. S. 657, 658).

In *Bowman* v. *Railway Co.* (1888), 125 U. S. 465, the point, and the only point, decided, was that a statute of Iowa, which forbade common carriers to bring intoxicating liquors into the State from any other State, without first obtaining a certificate from a county officer of Iowa that the consignee was authorized by the laws of Iowa to sell such liquors, was an unconstitutional regulation of interstate commerce. While Mr. Justice FIELD in his separate opinion (page 507) intimated, and three dissenting Justices (pages 514, 515) feared, that the decision was in effect inconsistent with the decision in the *License Cases*, Mr Justice MATTHEWS, who delivered the judgment of a majority of the Court, not only cautiously avoided committing the Court to any such conclusion, but took great pains to mark the essential difference between the two decisions. On the one hand, after making a careful analysis of the opinions in the *License Cases*, he said:—

"From this analysis, it is apparent that the question presented in this case was not decided in the *License Cases*. The point in judgment in them was strictly confined to the right of the States to prohibit the sale of intoxicating liquor after it had been brought within their territorial limits. The right to bring it within the States was not questioned."

On the other hand, in stating the reasons for holding the statute of Iowa, prohibiting the transportation of liquors from another State, not to be a legitimate exertion of the police power of the State of Iowa, he said:—

"It is not an exercise of the jurisdiction of the State over persons and property within its limits. On the contrary, it is an attempt to exert that jurisdiction over persons and property within the limits of other States. It seeks to prohibit and stop their passage and importation into its own limits, and is designed as a regulation for the conduct of commerce before the merchandise is brought to its border.

But the right to prohibit sales, so far as conceded to the States, arises only after the act of transportation has terminated, because the sales which the State may forbid are of things within its jurisdiction. Its power over them does not begin to operate until they are brought within the territorial limits which circumscribe it:" (125 U. S. 479, 498, 499).

In the opinion of the majority of the Court in that case, it was noted that the omission of Congress to legislate might not so readily justify an inference of its intention to exclude State legislation in matters affecting interstate commerce, as in those affecting foreign commerce; Mr. Justice MATTHEWS saying:—

"The organization of our State and federal system of government is such that the People of the several States can have no relations with foreign powers in respect to commerce nor any other subject, except through the Government of the United States and its laws and treaties. The same necessity does not exist equally in reference to commerce among the States. The power conferred upon Congress to regulate commerce among the States is indeed contained in the same clause of the Constitution which confers upon it power to regulate commerce with foreign nations. The grant is conceived in the same terms, and the two powers are undoubtedly of the same class and character, and equally extensive. The actual exercise of its power over either subject is equally and necessarily exclusive of that of the States, and paramount over all the powers of the States; so that State legislation, however legitimate in its origin or object, when it conflicts with the positive legislation of Congress, or its intention reasonably implied from its silence, in respect to the subject of commerce of both kinds, must fail. And yet, in respect to commerce among

the States, it may be, for the reason already assigned, that the same inference is not always to be drawn from the absence of Congressional legislation as might be in the case of commerce with foreign nations. The question, therefore, may be still considered in each case as it arises, whether the fact that Congress has failed in the particular instance to provide by law a regulation of commerce among the States is conclusive of its intention that the subject shall be free from all positive regulation, or that, until it positively interferes, such commerce may be left to be freely dealt with by the respective States:" (125 U. S. 482, 483).

In *Kidd* v. *Pearson* (1888), 128 U. S. 1, a statute of Iowa, prohibiting the manufacture or sale of intoxicating liquors, except for mechanical, medicinal, culinary and sacramental purposes only, and authorizing any building used for their unlawful manufacture to be abated as a nuisance, was unanimously held to be constitutional, as applied to a case in which the liquors were manufactured for exportation and were sold outside the State; and the Court, in showing how impracticable it would be for Congress to regulate the manufacture of goods in one State to be sold in another, said:—

"The demands of such a supervision would require, not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. A situation more paralyzing to the State governments, and more provocative of conflicts between the General Government and the States, and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine:" (128 U. S. 21, 22).

The language thus applied to Congressional supervision of the manufacture within one State of intoxicating liquors intended to be sold in other States appears to us to apply with hardly less force to the regulation by Congress of the sale within one State of intoxicating liquors brought from another State. How far the protection of the public order, health, and morals demands the restriction or prohibition of the sale of intoxicating liquors is a question peculiarly appertaining to the legislatures of the several States, and to be determined by them upon their own views of public policy, taking into consideration the needs, the education, the habits, and the usages of people of various races and origin, and living in regions far apart and widely differing in climate and in physical char-

acteristics. The local option laws prevailing in many of the States indicate the judgment of as many legislatures that the sale of intoxicating liquors does not admit of regulation by a uniform rule over so large an area as a single State, much less over the area of a continent.

It is manifest that the regulation of the sale, as of the manufacture, of such liquors manufactured in one State to be sold in another, is a subject which, far from requiring, hardly admits of a uniform system or plan throughout the United States. It is, in its very nature, not national, but local; and must, in order to be either reasonable or effective, conform to the local policy and legislation concerning the sale or the manufacture of intoxicating liquors generally. Congress cannot regulate this subject under the police power, because that power has not been conceded to Congress, but remains in the several States; nor under the commercial power, without either prescribing a general rule unsuited to the nature and requirements of the subject, or else departing from that uniformity of regulation which, as declared by this Court in *Kidd* v. *Pearson*, above cited, it was the object of the commercial clause of the Constitution to secure.

The above review of the judgments of this Court, since the decision in the *License Cases*, appears to us to demonstrate that that decision, while often referred to, has never been overruled or its authority impugned. It only remains to sum up the reasons which have satisfied us that the judgment of the Supreme Court of Iowa in the case at bar should be affirmed.

The protection of the safety, the health, the morals, the good order, and the general welfare of the people is the chief end of the government. *Salus populi suprema lex.* The police power is inherent in the States, reserved to them by the Constitution, and necessary to their existence as organized governments. The Constitution of the United States, and the laws made in pursuance thereof, being the supreme law of the land, all statutes of a State must, of course, give way, so far as they are repugnant to the National Constitution and laws. But an intention is not lightly to be imputed to the framers of the Constitution, or to the Congress of the United States, to sub-

ordinate the protection of the safety, health and morals of the people to the promotion of trade and commerce.

The police power extends to the control and regulation of things which, when used in a lawful and proper manner, are subjects of property and of commerce, and yet may be used so as to be injurious or dangerous to the public safety, the public health or the public morals. Common experience has shown that the general and unrestricted use of intoxicating liquors tends to produce idleness, disorder, disease, pauperism, and crime. The power of regulating or prohibiting the manufacture and sale of intoxicating liquors appropriately belongs, as a branch of the police power, to the legislatures of the several States, and can be judiciously and effectively exercised by them alone, according to their views of public policy and local needs; and cannot practically, if it can constitutionally, be wielded by Congress as part of a national and uniform system.

The statutes in question were enacted by the State of Iowa in the exercise of its undoubted power to protect its inhabitants against the evils, physical, moral and social, attending the free use of intoxicating liquors. They are not aimed at interstate commerce. They have no relation to the movement of goods from one State to another, but operate only on intoxicating liquors within the territorial limits of the State. They include all such liquors without discrimination, and do not even mention where they are made or whence they come. They affect commerce much more remotely and indirectly than laws of a State (the validity of which is unquestioned), authorizing the erection of bridges and dams across navigable waters within its limits, which wholly obstruct the course of commerce and navigation; or than quarantine laws, which operate directly upon all ships and merchandise coming into the ports of the State.

If the statutes of a State, restricting or prohibiting the sale of intoxicating liquors within its territory, are to be held inoperative and void as applied to liquors sent or brought from another State, and sold by the importer in what are called "original packages," the consequence must be that an inhabitant of the State may, under the pretext of interstate com-

merce, and without license or supervision of any public authority, carry or send into, and sell in, any or all of the other States of the Union, intoxicating liquors of whatever description, in cases or kegs, or even in single bottles or flasks, despite any legislation of those States on the subject, and although his own State should be the only one which had not enacted similar laws. It would require positive and explicit legislation on the part of Congress to convince us that it contemplated or intended such a result.

The decision in the *License Cases* (1847), 5 How. (46 U. S.) 504, by which the Court, maintaining these views, unanimously adjudged that a general statute of a State, prohibiting the sale of intoxicating liquors without license from municipal authorities, included liquors brought from another State and sold by the importer in the original barrel or package, should be upheld and followed, because it was made upon full argument and great consideration; because it established a wise and just rule regarding a most delicate point in our complex system of government, a point always difficult of definition and adjustment, the contact between the paramount commercial power granted to Congress, and the inherent police power reserved to the States; because it is in accordance with the usage and practice which have prevailed during the century since the adoption of the Constitution; because it has been accepted and acted on for forty years by Congress, by the State legislatures, by the Courts and by the People; and because to hold otherwise would add nothing to the dignity and supremacy of the powers of Congress, while it would cripple, not to say destroy, the whole control of every State over the sale of intoxicating liquors within its borders.

The silence and inaction of Congress upon the subject, during the long period since the decision of the *License Cases*, appear to us to require the inference that Congress intended that the law should remain as thereby declared by this Court, rather than to warrant the presumption that Congress intended that commerce among the States should be free from the indirect effect of such an exercise of the police power for the public safety, as had been adjudged by that decision to be within the constitutional authority of the States.

For these reasons we are compelled to dissent from the opinion and judgment of the majority of the Court.

The fundamental principle, upon which was founded the popular objections to the foregoing judgment, was a principle of Constitutional interpretation irreconcilable with that declared and applied by MARSHALL (*ante*, pages 451, 417, 418), and JOHNSON (*ante*, page 419), and even BALDWIN (*ante*, page 420); that is, the commerce powers ought to be exercised in subordination to the supreme dominion of the States. Its usual form of application is that delivery to the consignee terminates the importation and the State may immediately act upon the merchandise: *ante*, pages 450, 462. This is one of the commonest errors, even by writers who ought to be familiar with the principles of *Brown* v. *Maryland*, *The Passenger Cases*, *Cooley* v. *Port Wardens*, and the decisions based upon these judgments (*ante*, pages 420, 439, 441, 442, 459, 462, 466, 470). The newspaper writers cannot therefore be expected to do better than criticise the claim that there must be a transfer of the property from the consignee before the State law applies, as "unreasonable and illogical," and even without a shadow of reason and justice.

A curious variation of this legal heresy is the denial that the owner of an original package has any more rights than he who has broken up the packages in which his merchandise was received, and offers the separate parcels for sale. This denial appears to be prevalent in the Western States, and is perhaps as well expressed as may be by Chief Justice REED of Iowa in *Collins* v. *Hills* (*supra*, pages 483, 485). To that opinion may be added another thought which has also prevailed, though no Justice of the Supreme Court of the United States has given it countenance. It is, that the State has power to declare certain articles prohibited and no longer merchandise. But Chief Justice TANEY, in the *License Cases* (*supra*, pages 456–7) at its first suggestion and Chief Justice FULLER, in the *Original Package Case* (*supra*, page 499), at its last, have alike laid down the rule that commercial usage, and not bucolic simplicity, or State prejudice affords the test of an article of commerce. The difficulty arises from a misreading of *Brown* v. *Maryland* and *Woodruff* v. *Parham*. As the correct understanding of these cases is the subject of the fourteenth division of the leading article (*supra*) on the law govering an original package, it is not necessary to repeat it here: the power of the State does not attach until the original package is broken, but in *Brown* v. *Maryland* the Court was compelled by the dissent of Justice THOMPSON (*supra*, page 444) to observe the effect of allowing the State to act upon broken up original packages. Yet the line was drawn at that point in the boundary between goods brought in for sale, and those incorporated and mixed up with the mass of property subject to State laws.

It is manifest that the dissenting opinion of Justice GRAY has no other foundation than the *License Cases*. It is unnecessary to repeat what has been already printed on pages 453–9, *ante;* the effort to separate the interpretation of two immediately adjoining and similar

qualifications of the phrase "To regulate commerce," (*ante*, page 420) could have no other reasonable basis than the principle of State superiority already mentioned. Yet, when applied in this manner, such principle of interpretation carries with it the means of its own destruction whenever the necessities of interstate commerce should become as pressing as those which arose from State regulation of foreign commerce: (*ante*, pages 416, 422). The much safer interpretation is that which from time to time, as new necessities arise, like the telegraph and telephone, applies (in the absence of Congressional action) the test of the necessity of general as distinguished from State regulation.

The effort in the *License Cases*, the Miln case, and in this dissenting opinion of Justice GRAY, was really to define the police powers of the States. By the authority of these powers and the great mass of judicial expressions relating to them, instead of an Act of Congress, every State was to regulate its own internal traffic, so far as to single out certain commodities introduced from other States and effectually prevent their sale within the State to which they might be shipped. Thus, it has been said that a person in a State which prohibits the sale of liquor, may import it for his own use, "but if he proceed to employ it as a stock in trade, the local government may put forth its police power to restrain the inhibited traffic, even by seizure and destruction of the property." Such is not the law, simply because the local authority is made expressly subject to the Constitutional powers: (*supra*, page 425).

The dissenting opinion of Justice GRAY operates to uphold restraints upon the liquor traffic by giving full play to State laws in all cases where Congress had not acted. Upon first thought, nothing is more entrancing: the local authority should be able to protect the local community, even if that community be some small local option township. But this principle of KENT (*ante*, page 421) was not legitimately used. For this, the inaction of Congress was largely the cause, and that, in turn, was the result of the reaction which brought JEFFERSON to be a commanding political personage: in other words, the country was not truly commercial, not yet bound together by the railroad, the telegraph and the telephone, and the principles of local and social prejudice were dominant. In this condition of the country, State jealousies brought before the Supreme Court, a *Wheeling Bridge Case* as well as *Passenger Cases*, and forced that Court to proceed somewhere, either straight along the boundary laid out by MARSHALL, or declining more or less away from it towards encouraging the jealousies which called for decisions upon concurrent powers and the supremacy of the Constitution, as well as upon the immediate questions of navigation, immigration, and State taxation. Such decisions proceeded from a Court whose supreme judgment had been denied, refused execution by a president of the United States, and finally sustained only by repeated reversals of the State Courts by Justices of both political faiths. It was natural that the Court would uphold its own authority, and would carefully guard the commerce di-